Terms and Conditions of Sale
The Terms and Conditions of Sale set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the contract for the sale of products or services (hereinafter referred to as Product(s) or Services by Eaton Industries (Canada) Company (hereinafter referred to as Seller) to the Buyer, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between the Seller and the Buyer. Notwithstanding any contrary language in the Buyer’s purchase order, correspondence or other form of acknowledgment, Buyer shall be bound by these Terms and Conditions of Sale when it sends a purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Seller of the Products or Services. The CONTRACT FOR SALE OF THE PRODUCTS OR SERVICES IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF SALE STATED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER. No contract shall exist except as herein provided.

Complete Agreement
No amendment or modification hereto nor any statement, representation or warranty not contained herein shall be binding on the Seller unless made in writing by an authorized representative of the Seller. Prior dealings, usage of the trade or a course of performance will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

Quotations
Written quotations are valid for 30 days from its date unless otherwise stated in the quotation or terminated sooner by notice.

Verbal quotations, unless accepted, expire the same day they are made.

A complete signed order must be received by Seller within 20 calendar days of notification of award; otherwise the price and shipment will be subject to re-negotiation.

TERMINATION AND CANCELLATION
Products
Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges, including all progress billings and all incurred direct manufacturing costs.

Services
Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges including all costs plus profit.

Selling Policy – Products and Services
When prices are quoted as firm for quoted shipment, they are firm provided the following conditions are met:

1. The order is released with complete engineering details.
2. Shipment of Products is made, and Services purchased are provided within the quoted lead-time.
3. When drawings for approval are required for any products, the drawings applicable to those Products must be returned within 30 calendar days from the date of the original mailing of the drawings by Seller (60 days where a Contractor is involved). The return drawings must be released for manufacture and shipment and must be marked “APPROVED” or “APPROVED AS NOTED.” Drawing re-submittals, which are required for any other reason than to correct Seller errors, will not extend the 30-day period.

If the Buyer initiates or in any way causes delays in shipment, provision of Services or return of approved drawings beyond the periods stated above, the price of the Products or Services will be increased 1% per month or fraction thereof up to a maximum of 18 months from the date of the Buyer’s order. For delays resulting in shipment or provision of Services beyond 18 months from the date of the Buyer’s order, the price must be renegotiated.

Minimum Billing
Shelf goods individual purchase orders less than $100.00 will be billed $100.00.

Rush Shipments
Fee applies to shelf product orders where the customer requests “guaranteed” same day rush treatment of available product.

Taxes
The price does not include any taxes. Buyer shall be responsible for the payment of all taxes applicable to, or arising from the transaction, the Products, its sale, value, or use, or any Services performed in connection therewith regardless of the person or entity actually taxed.

TERMS OF PAYMENT
Product
At option of Seller one of the following will be quoted:

Terms of Payment - Net 25th Prox.
Terms of payment are Net 25th of the month following shipment.

Cash Discount
A cash discount can be applied to orders for predefined Products designated by Seller from time to time, whether shipped to a Distributor or drop shipped. The discount will be earned on orders for such Products when payment is received on or before the 10th day of the month following shipment by Seller and where the account is not in arrears.

Terms of Payment - Net 30
Terms of payment are net within 30 days from the date of invoice.

Progress Billings: we reserve the right to require progress payment terms on orders over $500,000 Canadian.

Services
Terms of payment are net within 30 days from date of invoice for orders amounting to less than $50,000.00.

Terms of payment for orders exceeding $50,000.00 shall be made according to the following:

1. Twenty percent (20%) of order value with the purchase order payable 30 days from date of invoice.
2. Eighty percent (80%) of order value in equal monthly payments over the performance period payable 30 days from date of invoice.

Except for work performed (i) under a firm fixed price basis or (ii) pursuant to terms of a previously priced existing contract between Seller and Buyer, invoices for work performed by Seller shall have added and noted on each invoice a charge of 3% (over and above the price of the work) which is related to Seller compliance with present and proposed environmental, health, and safety regulations associated with prescribed requirements covering hazardous materials management and employee training, communications, personal protective equipment, documentation and record keeping associated therewith.

Adequate Assurances
If, in the judgment of Seller, the financial condition of the Buyer, at any time during the period of the contract, does not justify the terms of payment specified, Seller may require full or partial payment in advance.
Delayed Payment
If payments are not made in accordance with these terms, a service charge will, without prejudice to the right of Seller to immediate payment, be added in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal rate on the unpaid balance. In addition, any special remuneration will be forfeited until payment is made.

FREIGHT
Freight policy will be listed on the Product discount sheets, or at option of Seller one of the following will be quoted:

FCA - P/S - Frt./Ppd. and Allowed
Product is sold FCA, point of shipment, freight prepaid and included to the Buyer for purchase orders valued at $1,000.00 or more, pre-tax. Freight is charged at 5% of invoice value or $25.00 whichever is greater, for orders less than $1,000.00. The 5% fee will be waived on 'collect', premium freight (charged) minimum billing or 'rush fee' applied shipments.

Seller reserves the right to charge freight on small project ‘staged’ shipments post the initial shipment, when the staged shipments are at customer request.

FCA - P/S - Frt./Charged
Product is sold FCA point of shipment and freight charged to the Buyer.

FCA Destination - Frt./Ppd. and Allowed
At Buyer’s option, Seller will deliver the Products FCA destination freight prepaid and 2% will be added to the net price. The term “freight prepaid” means that freight charges will be prepaid to the accessible common carrier delivery point nearest the destination for shipments within Canada unless noted differently on the Product discount sheets. For any other destination contact Seller’s representative.

Shipment and Routing
Seller shall select the point of origin of shipment, the method of transportation, the type of carrier equipment, and the routing of the shipment.

If the Buyer specifies a special mode of transportation, type of carrier equipment, routing, or delivery requirement, Buyer shall pay all special freight and handling charges.

When freight is included in the price, no allowance will be made in lieu of transportation if the Buyer accepts shipment at factory, warehouse, or freight station or otherwise supplies its own transportation.

Risk of Loss
Risk of loss or damage to the Products shall pass to Buyer at the FCA point. The Buyer is responsible to procure adequate insurance for loss or damage during shipment.

Concealed Damage & Short Shipsments
Except in the event of FCA destination shipments, Seller will not participate in any settlement of claims for concealed damage.

When shipment has been made on an FCA destination basis, the Buyer must unpack immediately and, if damage is discovered must:
1. Not move the Products from the point of examination.
2. Retain shipping container and packaging material.
3. Notify the carrier in writing of any apparent damage.
4. Notify Seller a copy of the carrier’s inspection report.
5. Ship to Seller a copy of the carrier’s inspection report.
6. Shortages in quantity must be reported in writing to Seller within 72 hours from receipt.

Witnessed Tests/Customer Inspection
Standard factory tests may be witnessed by the Buyer at Seller’s factory for an additional charge calculated at the rate of $2,500 per day (not to exceed eight (8) hours) per Product type. Buyer may final inspect Products at Seller’s factory for $700 per day per Product type.

Witness tests will add one (1) week to the scheduled shipping date. Seller will notify Buyer fourteen (14) calendar days prior to schedule witness testing or inspection. In the event Buyer is unable to attend, the Parties shall mutually agree on a rescheduled date. However, Seller reserves the right to deem the witness tests waived with the right to ship and invoice the Products.

Held Orders
For any order held, delayed or rescheduled at the request of the Buyer, Seller may, at its sole option (1) require payment to be based on any reasonable basis, including but not limited to the contract price, and any additional expenses, or cost resulting from such a delay; (2) store Products at the sole cost and risk of loss to the Buyer; and/or (3) charge to the Buyer those prices under the applicable price policy. Payment for such price, expenses and costs, in any such event, shall be due by Buyer within thirty (30) days from date of Seller’s invoice. Any order so held delayed or rescheduled beyond three (3) months will be treated as a Buyer termination.

Drawing Approval
Seller will design the Products in line with, in Seller’s judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in their specifications, Seller will be paid reasonable charges and allowed a commensurate delay in shipping date based on the changes made.

Drawing Re-Submittal
When Seller agrees to do so in its quotation, Seller shall provide Buyer with the first set of factory customer approval drawing(s) at Seller’s expense. The customer approval drawing(s) will be delivered at the quoted delivery date. If Buyer requests drawing changes or additions after the initial factory customer approval drawing(s) have been submitted by Seller, the Seller, at its option, may assess Buyer drawing charges. Factory customer approval drawing changes required due to misinterpretation by Seller will be at Seller’s expense. Approval drawings generated by Bid-Manager are excluded from this provision.

Warranty
Warranty For Products
Seller warrants that the Products manufactured by it will conform to Seller’s applicable specifications and be free from failure due to defects in workmanship and material for one (1) year from the date of installation of the Product or eighteen (18) months from the date of shipment of the Product, whichever occurs first.

In the event any Product fails to comply with the foregoing warranty Seller will, at its option, either (a) repair or replace the defective Product, or defective part or component thereof, FCA Seller’s facility freight prepaid, or (b) credit Buyer for the purchase price of the Product. All warranty claims shall be made in writing. Seller requires all non-conforming Products be returned at Seller’s expense for evaluation unless specifically stated otherwise in writing by Seller.

This warranty does not cover failure or damage due to storage, installation, operation or maintenance not in conformance with Seller’s recommendations and industry standard practice or due to accident, misuse, abuse or negligence. This warranty does not cover reimbursement for labour, gaining access, removal, installation, temporary power or any other expenses, which may be incurred in connection with repair or replacement.

This warranty does not apply to equipment not manufactured by Seller. Seller limits itself to extending the same warranty it receives from the supplier.

Extended Warranty for Products
If requested by the Buyer and specifically accepted in writing by Seller, the foregoing standard warranty for Products will be extended from the date of shipment for the period and price indicated below:

- 24 months – 2% of Contract Price
- 30 months – 3% of Contract Price
- 36 months – 4% of Contract Price
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Special Warranty (In and Out) for Products
If requested by the Buyer and specifically accepted in writing by Seller, Seller will, during the warranty period for Products, at an additional cost of 2% of the contract price, be responsible for the direct cost of:
1. Removing the Product from the installed location.
2. Transportation to the repair facility and return to the site.
3. Reinstallation on site.

The total liability of Seller for this Special Warranty for Products is limited to 50% of the contract price of the particular Product being repaired and excludes expenses for removing adjacent apparatus, walls, piping, structures, temporary service, etc.

Warranty For Services
Seller warrants that the Services performed by it hereunder will be performed in accordance with generally accepted professional standards.

The Services, which do not so conform, shall be corrected by Seller upon notification in writing by the Buyer within one (1) year after completion of the Services.

Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer’s, or its customers, equipment or with respect to any latent defects in the same. This warranty does not cover damage to Buyer’s, or its customers, equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. Buyer will, at its cost, provide Seller with unobstructed access to the defective Services, as well as adequate free working space in the immediate vicinity of the defective Services and such facilities and systems, including, without limitation, docks, cranes and utility disconnects and connects, as may be necessary in order that Seller may perform its warranty obligations. The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

Warranty for Power Systems Studies
Seller warrants that any power systems studies performed by it will conform to generally accepted professional standards. Any portion of the study, which does not so conform shall be corrected by Seller upon notification in writing by the Buyer within six (6) months after completion of the study. All warranty work shall be performed in a single shift straight time basis Monday through Friday. In the event that the study requires correction of warranty items on an overtime schedule, the premium portion of such overtime shall be for the Buyer’s account.

Limitation on Warranties for Products, Services and Power Systems Studies
THE FOREGOING WARRANTIES ARE EXCLUSIVE EXCEPT FOR WARRANTIES OF TITLE. SELLER DISCLAIMS ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE SELLER’S SOLE LIABILITY AND BUYER’S EXCLUSIVE REMEDY FOR FAILURE OF SELLER TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CAUSED BY THE BUYER OR CAUSED BY CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EXTRA-CONTRACTUALLY, OR OTHERWISE.

Asbestos
Provincial Law requires that building or facility owners identify the presence, location and quantity of asbestos containing material (hereinafter “ACM”) at work sites. Seller is not licensed to abate ACM. Accordingly, for any contract which includes the provision of Services, prior to (i) commencement of work at any site under a specific Purchase Order, (ii) a change in the work scope of any Purchase Order, the Buyer will certify that the work area associated with the Seller’s scope of work includes the handling of Class II ACM, including but not limited to generator wedges and high temperature gaskets which include asbestos materials. The Buyer shall, at its expense, conduct abatement should the removal, handling, modification or reinstallation, or some or all of them, of said Class II ACM be likely to generate airborne asbestos fibers; and should such abatement affect the cost of or time of performance of the work then Seller shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the contract.

Compliance with Nuclear Regulation
Seller’s Products are sold as commercial grade Products not intended for application in facilities or activities licensed by the Atomic Energy Control Board of Canada for atomic purposes. Further certification will be required for use of the Products in any safety-related application in any nuclear facility licensed by the AECB.

Returning Products
Authorization and shipping instructions for the return of any Products must be obtained from Seller before returning the Products. Re-stocking charge applies to excess and Customer error returns.

When return is occasioned due to Seller error, full credit including all transportation charges will be allowed.

Product Notices
Buyer shall provide the user (including its employees) of the Products with all Seller supplied Product notices, warnings, instructions, recommendations, and similar materials.

Force Majeure
Seller shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the Buyer, acts of terrorism, riot, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond Seller’s reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Liquidated Damages
Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by an authorized representative of the Seller at its headquarters office.

Patent Infringement
Seller will defend or, at its option, settle any suit or proceeding brought against Buyer, or Buyer’s customers, to the extent it is based upon a claim that any Product or part thereof, manufactured by Seller or its subsidiaries and furnished hereunder infringes any Canadian or United States patent, other than a claim of infringement based upon use of a Product or part thereof in a process, provided Seller is notified in reasonable time and given authority, information and assistance (at Seller’s expense) for the defense of same. Seller shall pay all legal and court costs and expenses and court-assessed damages awarded therein against Buyer and resulting from or incident to the suit or proceeding. In addition to the foregoing, if at any time Seller determines there is a substantial question of infringement of any Canadian or United States patent, and the use of such Product is or may be enjoined, Seller may, at its option and expense, either (a) procure for Buyer the right to continue using and selling the Product; (b) replace the Product with non-infringing apparatus; (c) modify the Product so it becomes non-infringing; or (d) as a last resort, remove the Product and refund the purchase price, equitably adjusted for use and obsolescence. In no case does Seller agree to pay any recovery based upon its Buyer’s savings or profit through use of Seller’s Products whether the use be special or ordinary. The foregoing states the entire liability of Seller for patent infringement.

The preceding paragraph does not apply to any infringement based upon: (a) any modification made to a Product other than by Seller; (b) any design and/or
specifications of Buyer to which a Product was manufactured; or (c) the use or combination of Product with other products where the Product does not itself infringe. As to the above-identified claim situations where the preceding paragraph does not apply Buyer shall defend and hold Seller harmless in the same manner and to the extent as Seller’s obligation described in the preceding paragraph. Buyer shall be responsible for obtaining (at Buyer’s expense) all license rights required for Seller to be able to use software products in the possession of Buyer where such use is required in order to perform any Service for Buyer.

With respect to a Product or part thereof not manufactured by Seller or its subsidiaries, Seller will attempt to obtain for Buyer, from the supplier(s), the patent indemnification protection normally provided by the supplier(s) to customers.

Compliance with OSHA
Seller offers no warranty and makes no representation that its Products comply with the provisions or standards of the Occupational Safety and Health Act of 1998, or any regulation issued there under. In no event shall Seller be liable for any loss, damage, fines, penalty or expenses arising under said Act.

Limitation of Liability
THE REMEDIES OF THE BUYER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER.

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) EXTRA-CONTRACTUALLY, OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH POTENTIAL DAMAGES ARE FORESEEABLE OR IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

THE TOTAL CUMULATIVE LIABILITY OF SELLER ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) EXTRA-CONTRACTUALLY OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.

Governing Law
This contract shall be governed, interpreted and construed by and in accordance with the laws of the Province of Ontario.

Election of Language
It is the express wish of the parties that this document and all documents related to it be drawn up in English. Les parties aux présentes ont expressément exigé que ce document soit rédigé en langue anglaise ainsi que tous documents y afférent.

Eaton Industries (Canada) Company
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