Domestic Terms and Conditions of Sale 2012

Terms & Conditions of Sale

The Terms & Conditions of Sale set forth herein, and any supplements, which may be attached hereto, shall apply to all tenders made and all orders for the sale, supply, erection or installation of goods or performance of services ("Goods" and "Services") accepted by Eaton Electric Ltd. (hereinafter referred to as "Seller"). Notwithstanding any contrary language in the Buyer's purchase order, correspondence or other form of acknowledgment, Buyer shall be bound by these Terms & Conditions of Sale. Special or additional terms of the Buyer shall only be binding upon Seller if specifically accepted in writing and signed by an authorised Director of Seller. No contract shall exist except as herein provided.

Tender

Written tenders are valid for thirty (30) days from tender date unless otherwise stated by Seller in the tender or terminated sooner by written notice. Verbal tenders, unless accepted, expire the same day they are made. A complete signed order, including all specifications and documentation to perform the work, must be received by Seller within ten (10) calendar days of notification of award, otherwise Seller reserves the right to amend the delivery date and tender price to cover any increase in cost which Seller may incur after acceptance.

Minimum Order Value

The minimum order value acceptable by Seller is £250/€375 excluding VAT.

Documentation

The Goods are manufactured according to Seller's specifications unless otherwise agreed upon in writing. Seller reserves the right to make any changes to any specification furnished by the Buyer which are required to conform with any applicable statutory or EC requirements or, where the Goods are supplied to Seller's specification which does not materially affect their quality or performance. Seller does not assume responsibility for Goods manufactured, priced or delivered not in accordance with the agreed upon order or the specifications, unless the Buyer's order and specifications are clear and correct in every particular.

Where approval of drawings and specifications for projects and systems is required, a copy of the final layout drawings will be forwarded to the Buyer prior to manufacture and any alterations required must be clearly indicated and advised to the Seller within the timescale provided.

All descriptions, illustrations, particulars of weights and dimensions issued by the Seller in catalogues, price lists, advertising matter and forwarding specifications are by way of general descriptions and approximate only, and shall not form part of any contract or give rise to any liability on the part of the Seller.

Freight

Standard Carriage & Packing charges in the United Kingdom are included within Seller's United Kingdom list prices. Standard carriage is via a two (2) working day carrier service to a United Kingdom mainland destination.

Passing of Property and Risk

(a) Notwithstanding that the Goods sold by Seller hereunder have been delivered to Buyer, the Goods shall remain the absolute property of Seller until payment of all amounts invoiced by Seller to Buyer and outstanding from time to time.

(b) All risk in the Goods shall be borne by Buyer from the point specified for delivery of the Goods to Buyer, and Buyer will take out and maintain insurance cover to the full value thereof against all risks.

(c) Buyer agrees to store the Goods in such a way that they are readily identifiable as of Seller's manufacture.

(d) In the event Buyer fails to make payment for the Goods when due, commit any act of bankruptcy, make any arrangements with its creditors, enter into liquidation, have a winding-up order made against Buyer or if any receiver or manager of Buyer's assets, income or any parts thereof shall be appointed, Seller shall, after giving notice of its intention and without prejudice to any other rights, have the right immediately to enter upon Buyer's premises with such transport as may be necessary and repossess Goods to the value of all sums due Seller.

(e) Until such time as any of the events specified in paragraph (d) above have occurred, Buyer shall have the right to sell the Goods to any bona fide buyer but shall not give any warranties or incur any liability on behalf of Seller and in the event of any such sale or of any other disposal by Buyer, or if Buyer shall make any insurance claim in respect of the Goods while they remain Seller's property, Buyer has a fiduciary duty to account to Seller for the proceeds of such sale, other disposition or insurance claim (and shall hold any claim to such proceeds as trustee for Seller) to the extent of all sums invoiced by Seller and outstanding from time to time.

(f) If the Goods are used as a component in the production of other goods or are mixed with other goods, Seller shall be entitled to exercise its right of repossession under paragraph (d) above over the composite products or mixture, as the case may be, and Buyer shall have the same duty to account to Seller for the proceeds of any sale, disposition or insurance claim relating to such composite products or mixture and to hold any claim thereto as trustee for Seller to the extent of all sums invoiced by Seller and outstanding from time to time, as it has under paragraph (e) in respect of the proceeds of sale, disposition or insurance claims or claim thereto relating to the Goods.

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Eaton's Electrical Sector is a global leader in power distribution, power quality, control and automation, and monitoring products. When combined with Eaton's fullscale engineering services, these products provide customer-driven PowerChain Management solutions to serve the power system needs of the data center, industrial, institutional, public sector, utility, commercial, residential, IT, mission critical, alternative energy and OEM markets worldwide.

PowerChain Management solutions help enterprises achieve sustainable and competitive advantages through proactive management of the power system as a strategic, integrated asset throughout its life cycle, resulting in enhanced safety, greater reliability and energy efficiency. For more information, visit www.eaton.com/electrical.

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Prices

Standard Catalogue Goods:

All selling prices are set forth in Seller's standard price lists prevailing at the date of the despatch and are carriage paid within the United Kingdom, exclusive of VAT. Seller reserves the right to alter or amend such price lists from time to time.

All invoiced price discrepancies must be notified by the Buyer to the Seller within fourteen (14) working days of the date of invoice.

Services, Projects and Systems:

The prices stated in Seller's tender for specially designed Goods and Services performed are based on the cost of material, labour, on-site services, transport and statutory obligations ruling at the date of tender, and if between the tender date and the date of dispatch and/or completion, variations (either by rise or fall) shall occur in these costs then the order will, unless otherwise stated in writing, be subject to contract price adjustment based on the current Beama formulae as published on their website.

In the event of the suspension of the work by Buyer's instructions or lack of instructions, the contract price shall be increased to cover any extra expense thereby incurred by Seller.

Terms of Payment

Standard Catalogue Goods:

Seller shall be entitled to send the invoice for the Goods to Buyer immediately upon the Goods being dispatched or when the Goods are ready for dispatch but are prevented or delayed from being dispatched due a Force Majeure event.

Unless otherwise agreed, payment is due in full, without set-off or deferment, on the last working day of the month following the month in which the Goods are invoiced. A two and one-half percent (2.5%) discount will be allowed off invoice value, exclusive of VAT, if payment is made before the due date. The time for payment of the price shall be of the essence of the contract.

Projects and Systems:

Unless otherwise agreed, payment is due in full, without set-off or deferment, within thirty (30) days from date of despatch or invoice, whichever is sooner. The time for payment of the price shall be of the essence of the contract.

Where the contract is to be, or may be, fulfilled in separate deliveries or parts, payment for each such delivery or part shall be made as if the same constituted a separate contract.

Should the Buyer fail punctually to comply with the terms of payment, Seller shall be entitled to interest on any amount overdue at the rate of one and one-half percent (1.5%) above the Base Rate of HSBC from time to time in force. (A part of a month being treated as a full month for the purpose of calculating interest.)

Services:

Terms of payment are net within thirty (30) days from date of invoice for contracts amounting to less than £30,000/€45,000.

Terms of payment for contracts exceeding £30,000/€45,000 shall be made according to the following:

(a) Twenty percent (20%) of the contract value with the contract payable thirty (30) days from date of invoice.

(b) Eighty percent (80%) of the contract value in equal monthly payments over the performance period payable thirty (30) days from date of invoice.

Credit

Any contract shall be subject to Seller being satisfied as to the Buyer's credit references, and without prejudice to the generality of the foregoing, Seller may (in its absolute discretion), having informed Buyer that the Goods are ready for despatch, refrain from delivering the Goods until such time as Buyer tenders the purchase money to Seller together with any outstanding amounts which may be due to Seller on any account whatsoever.

Insolvency of Buyer

(a) This Clause applies if:

(i) The Buyer becomes insolvent or makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Seller) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) An encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or

(iii) The Buyer ceases, or threatens to cease, to carry on business; or

(iv) The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

(b) If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

(c) If this Clause applies then, the Buyer shall have a duty to immediately bring to the notice of any receiver administrator or any such person(s) appointed the existence of and content of the Condition 'Passing of Property and Risk' set forth in the Terms and Conditions of Sale, and the rights of the Buyer to use or trade on the Seller's Goods is immediately terminated and any such receiver administrator or other person or persons appointed will not be entitled to use or to trade on the Seller's Goods unless so authorised in writing by the Seller.

Cancellation

Contracts may be cancelled by the Buyer only upon Seller's written consent and on terms which will indemnify Seller in full against all losses (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by Seller as a result of cancellation.

Delivery

Unless accepted by the Seller in writing, all times or dates for delivery of the Goods are given in good faith but are approximate only. Seller shall not be liable for any delay in delivery however caused. Time for delivery shall not be of the essence of the contract.

All times or dates for delivery shall be calculated from the date of acceptance by Seller of the contract from the Buyer, or from the date of receipt by the Seller from the Buyer of all information, instructions and drawings as shall be necessary to enable the Seller to carry out the contract, whichever shall be the later.

Unless otherwise stated in writing the Seller shall be entitled to make partial deliveries of the Goods.

Express delivery is available and will incur additional cost, charges for which will be advised on placement of contract.

Damage or Loss in Transit

When the price quoted includes delivery, the Seller shall repair or replace free of charge Goods damaged in transit, provided that in the event of damage or storage, written notification giving details of such damage or shortage is sent to Seller within seven (7) calendar days of receipt, and in the event of non-delivery must be sent to the Seller within fourteen (14) days of the date shown on the contract. Buyer must provide to Seller the applicable Contract number and date of dispatch. In the event Buyer fails to give notice within the aforementioned period, the Goods will be deemed to be in all respects as invoiced.

Variations and Suspension

(a) Seller shall be under no obligation to alter or vary any part of the contract or any work connected therewith. Any alteration to or addition to or amendment or other variation of the specification, including any increase or decrease in the quantity of the Goods or any alteration to any drawings or to the quality, performance, weight or measurements of any Goods or any alteration or variation of advised delivery schedules, shall, if requested by Buyer, be subject to the agreement of Seller, with such alteration or addition to the price and to delivery dates or schedules as may be required by Seller, and shall not be binding upon Seller unless and until accepted by Seller in writing.

(b) In the event of any variation or suspension by Buyer's instructions or lack of instructions, Seller shall be entitled to adjust the contract price to reflect any additional costs incurred, and to adjust delivery dates or schedules.

(c) For any tender suspended, held, or rescheduled at the request of the Buyer, Seller may, at its sole option require payment to be based on any reasonable basis, including but not limited to the tender price, and any additional expenses, or cost resulting from such a delay; and if required, store parts at the sole cost and risk of loss of the Buyer. Payment shall be made to Seller net thirty (30) days from date of invoice. Any tender so held delayed or rescheduled beyond one hundred eighty (180) days will be treated as a Buyer cancellation.

Force Majeure

If in consequence of any circumstances of force majeure, including but without limitation, war, civil commotion or disturbance, strikes, labour trouble of any sort, shortage of manpower, fire, flood, shortage of fuel, power or raw materials, demands, restriction or requests of Government or similar authorities, terrorist acts, wrecks or delays in transportation, non-delivery or delay of Seller's supplies, and all other circumstances of whatever kind which are beyond Seller's reasonable control and which affect Seller's ability to fulfil its delivery obligations, or if delivery of the Goods or completion of the contract is prevented, impeded, or delayed, Seller shall be absolved from all responsibility and liability whatsoever and reserve the right at its option to cancel, wholly or partly, the contract or to postpone the delivery by such period beyond the time of delivery stated as is appropriate in the circumstances. Any cancellation by Seller shall be without prejudice to Seller's rights to recover all sums due in respect of deliveries made prior to cancellation.

Returns

In no circumstances may Goods supplied against a firm contract be returned without the Buyer having first applied for and obtained the written consent of the Seller. A handling charge of a minimum of twenty five percent (25%) to recover costs of re-stocking, transport and administration, will be deducted from any credit allowed by the Seller where it is established that the reason for the return of Goods was not due to any error on the part of the Seller. Products that are specialised or modified in any way from standard are not eligible for return or credit.

The minimum handling charge applicable is £100/€150 even where twenty five percent (25%) of the returned Goods value is less than this.

The Seller will not collect Goods from site. Goods returned by Buyer's transport or by third party carrier without the prior written consent of the Seller will not be credited. No credit will be due for Goods lost or disposed of without the Seller's written consent.

All Goods returned must be in a re-saleable condition, with undamaged cartons and must be in complete box quantities/minimum sales quantities as specified in product catalogues and latest published price list.

Breakages during carriage must be advised to Buyer within two (2) days of delivery, or carriers within three (3) days of delivery, or no claim will be allowed. All breakages must be returned to Seller, free of cost, in a packing case marked "Returned Breakages" (British Transport Regulations).

Inspection and Test

Goods are carefully inspected and, where practicable, submitted to Seller's standard tests before despatch. If special tests or tests in the presence of Buyer or Buyer's authorised representatives are required, unless otherwise agreed, Buyer will be charged for extra. In the event of any delay on Buyer's or Buyer's authorised representative's part in attending such tests after seven (7) days notice that Seller is ready, the tests will proceed in Buyer's absence and shall be deemed to have been made as if in Buyer's presence. All tests must be made at Seller's facilities.

Erection, Site Services and Limitations of Contract

Offloading, positioning, site engineering, testing and commissioning work on site is not included, unless set forth in Seller's tender.

Faults, Defects and Exclusion of Liability

Standard Catalogue Goods:

(a) All faults or defects, whether visual or non-visual, must be notified to Seller in writing within one (1) year of date of despatch.

(b) Providing the Buyer notifies Seller in accordance with (a) above and returns the Goods carriage paid within thirty (30) days and upon the fault or defect being established to Seller's satisfaction, Seller shall repair, or at Seller's option, replace the Goods delivered free to the Buyer's premises in exchange for the Goods returned.

Projects and Systems:

(a) In the event of any defect being disclosed in any Goods or parts thereof supplied by the Seller within one (1) year from the date of despatch, the Seller undertakes to consider any claim and/or examine the Goods or parts alleged to be defective and should any fault due to defective installation or erection carried out by the Seller, be found on such examination, to repair the defective Goods or parts, or at the option of the Seller, to supply and install free of charge, new Goods or parts in place of them.

(b) The above undertaking is limited to the supply to the Buyer, free at the Buyer's premises, of the new repaired Goods or parts thereof in exchange for any acknowledged by the Seller to be defective, and the responsibility for carriage and labour charges incurred in the re-installation of Goods, or the refitting of parts. The decision of the Seller on all claims and all questions as to defects and as to the exchange of any Goods or parts shall be final and conclusive.

(c) Unless expressly provided in the contract, the Seller will not repair or replace Goods which are capacitors or parts thereof unless the capacitors were at all material times operated in accordance with the conditions laid down in BSS 1650-1971 namely:

(i) the RMS voltage does not exceed the rated value by more than ten (10%),

(ii) the permissible increase in current loading due to:

(a) increased voltage, or

(b) increased frequency, or

(c) the presence of non-sinusoidal voltage does not exceed the fifteen (15%) for capacitors for operation up to and including 660 voltages in excess of 660 volts.

Services:

(a) Seller warrants that the Services performed by it hereunder will be performed in accordance with generally accepted professional standards applicable in the service industry.

(b) 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.

(c) Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer's equipment or with respect to any latent defects in the same. Buyer will, at its cost, provide Seller with unobstructed access to the defective equipment, as well as adequate free working space in the immediate vicinity of the defective equipment 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.

On all sales:

(a) Seller shall not replace Goods or make up shortages:

(i) in respect of which the Buyer or any third party has without Seller's previous written consent affected modifications or repairs;

(ii) if the faults or defects were caused by incorrect or negligent handling, installation, disregard of operating instructions, overloading, unsuitable work or any other default by the Buyer or any third party;

(iii) if the faults or defects were caused by fair wear and tear, accident or any other matter beyond Seller's reasonable control, occurring after the date of despatch.

(iv) in respect of any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Buyer;

(v) in respect of parts, materials or goods not manufactured by Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty as is given by the manufacturer to Seller;

(vi) if the total price for the Goods and/or Services has not been paid by the due date for payment.

(b) Without prejudice to the generality of the foregoing:

Seller shall not be liable, except where the Goods and Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), whether in contract, tort, liability or otherwise, to Buyer by reason of any representation (unless fraudulent) or for any warranties, conditions, other terms or liabilities express or implied by statute or common law or otherwise respecting the quality or fitness for any particular purpose and which bear no liability for any defect save as stated in this Faults, Defects and Exclusive Liability Condition and are excluded to the fullest extent permitted by law.

(c) The provision of this Faults, Defects and Exclusive Liability Condition shall apply, subject to any relevant limitations imposed by the Unfair Contract Terms Act 1977.

Indemnity

The Seller shall not be responsible for, and the Buyer shall at all times indemnify and hold the Seller harmless from and against, all actions, claims, demands, liabilities, damages, costs and expenses arising out of, or incurred in relation to, any injury to any persons or loss or damage to any property whatsoever, which is occasioned by or arises out of a defect in any of the Goods manufactured by the Seller, and which is solely attributable either to Seller's adherence to the Buyer's specification, or to the negligent acts or omissions of the Buyer.

Legal Construction / Arbitration

The contract and these Terms and Conditions of Sale shall in all respects be construed and operated in conformity with English law. If any part of a clause is unenforceable it shall not affect the validity of the remainder of that Condition, contract or of these Terms and Conditions of Sale as a whole.

All disputes, differences and questions which may at any time arise, between the parties hereto or their respective representatives or assigns, touching or arising out of or in respect of these Terms and Conditions of Sale or the contract or the subject matter thereof, shall be settled by arbitration and shall be referred to a single Arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. Failing agreement, the Arbitrator shall be appointed by the President for the time being of the Institution of Electrical Engineers, London.

Seller is a member of a group of companies whose holding company is Eaton Corporation and accordingly, Seller may perform any of Seller's obligations or exercise any of Seller's rights hereunder by or through any other member of this group, provided that any act or omission of any such member shall be deemed to be that act or omission of Seller.

Patents and Copyrights

The Buyer will indemnify the Seller against all damages, penalties, costs, losses and expenses suffered by the Seller or for which it may become liable in respect of the infringement of any intellectual property including (but without limitation), any patent copyright registered design trade mark trade name or know-how arising out of the Seller's manufacture of Goods in accordance with any specification design drawings or other data supplied by the Buyer or its servants or agents.

All drawings descriptions and other information submitted by the Seller, together with the copyright therein shall remain the property of the Seller.

Liability

The remedies of the Buyer set forth in these Terms and Conditions of Sale are exclusive and are its sole remedies for any failure of Seller to comply with its obligations hereunder. Notwithstanding any provision in these Terms and Conditions of Sale to the contrary, in no event shall Seller be liable in contract, in tort (including negligence or strict liability) or otherwise for damage to property or equipment other than Goods sold hereunder, loss of profits or revenue, loss of use, cost of capital, claims of customers of the Buyer or any special, indirect, incidental or consequential damages whatsoever. The total cumulative liability of Seller arising from or related to these Terms and Conditions of Sale whether the claims are based in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the Goods or Services on which such liability is based. Nothing in these Terms and Conditions of Sale shall restrict Seller's liability for death or personal injury caused solely and directly by Seller's negligence.