

Lucy Electric South Africa (PTY) Limited (the "Supplier") - Terms and Conditions of Sale

1. SCOPE AND DEFINITION

- 1.1 These terms and conditions shall apply in respect of each and every contract for the sale or provision of goods and/or services and/or the undertaking of projects by the supplier, unless specifically otherwise agreed between the parties in writing.
- 1.2 The provisions of this document shall overrule any terms and conditions of the customer, unless specifically otherwise agreed between the parties in writing.
- 1.3 The supplier may agree to a specific contract on special terms set out in the quotation or tender for such contract, and in the event of any inconsistency between the provisions of these terms and conditions and any such special terms, the special terms of the specific contract shall prevail.
- 1.4 In this document headings embodied in the clauses are for convenience and shall not be used in its interpretation, unless the context clearly indicates a contrary intention;
 - 1.4.1 the singular shall include the plural and vice versa;
 - 1.4.2 the reference to one gender shall be capable of being construed as reference to the others; and
 - 1.4.3 the reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa.
- 1.5 Unless the context of this document clearly indicates a contrary intention, the following words or phrases shall have these meanings assigned to them:
 - 1.5.1 "the supplier" shall mean the party to the contract who has to supply the goods and/or services and/or undertake the project;
 - 1.5.2 "the customer" shall mean any party with whom a contract is concluded;
 - 1.5.3 "goods" shall be those goods to be supplied by the supplier as specified in the supplier's quotation;
 - 1.5.4 "services" shall be those services to be supplied by the supplier as specified in the supplier's quotation;
 - 1.5.5 "projects" shall mean any project or projects, or parts thereof, to be undertaken by the supplier and as specified in the supplier's quotation;
 - 1.5.6 "order" shall mean a written request or instruction by the customer for the supply of the goods and/or services and/or the undertaking of projects by the supplier;
 - 1.5.7 "quotation" a written quotation or tender by the supplier for the supply of the goods and/or services and/or the undertaking of projects;
 - 1.5.8 "contract" shall mean any contract for the supply of goods and/or services and/or the undertaking of projects by the supplier;
 - 1.5.9 "acceptance tests" shall mean such tests to be undertaken by the supplier before the works are taken over by the customer as are provided for in the contract or, where no specific provision in the contract exists, such tests as are normally made by the supplier in respect of similar works;
 - 1.5.10 "acceptance certificate" shall mean a certificate evidencing the execution of acceptance tests, and the acceptance of the works in accordance with those tests;
 - 1.5.11 "hand-over date" shall mean the date that the customer signs an acceptance certificate certifying that the works have been completed in accordance with the contract and have passed the acceptance tests, or, where the customer fails and/or refuses to issue such a certificate through no fault of the supplier, the date upon which the works have been completed in accordance with the contract and, in the sole opinion of the supplier, have been ready for use, or 2 (two) months after the delivery of the works, whichever is the earlier;
 - 1.5.12 "works" shall mean all goods, work and services to be provided by the supplier in terms of the contract;
 - 1.5.13 "retentions" shall mean the withholding of portions of the contract price if so agreed upon between the parties, the purpose of which shall be to ensure the due fulfilment by the supplier of its obligations in terms of the contract;
 - 1.5.14 "the Act" the Occupational Health and Safety Act, No. 85 of 1993, as amended.
 - 1.5.15 "the CPA" the Consumer Protection Act, 68 of 2008, as may be amended.

2. ACCEPTANCE OF QUOTATION

- 2.1 Acceptance of the quotation by the customer shall constitute the contract between the supplier and the customer.
- 2.2 The following shall constitute acceptance of the quotation by the customer:

- 2.2.1 a signed and returned copy of the quotation by a duly authorised person of the customer to the supplier; or
 - 2.2.2 any written confirmation of the acceptance of the quotation by a duly authorised person of the customer; or
 - 2.2.3 receipt of an order from the customer after the transmission of a quotation by the supplier to the customer.
- 2.3 If the customer purports to accept any quotation subject to any qualification or to any terms other than those contained in this document and in the quotation, no contract shall be concluded and the supplier shall not be bound unless and until it expressly binds itself in writing to those terms.
- 2.4 A quotation provided by the supplier to a customer shall remain valid, and unless withdrawn prior to acceptance, shall be capable of acceptance within the period stated therein, or where no period is stated, for a period of thirty (30) days as calculated from the date of the quotation.
- 2.5 The acceptance of any quotation must be accompanied by sufficient information in writing to enable the supplier to proceed with the execution of the order forthwith, failing which the supplier shall be entitled to amend the delivery date and quoted prices to cover any increases in cost incurred as a result of such delay.
3. PURCHASE PRICE
 - 3.1 The purchase price for the goods shall be stipulated in the quotation and shall not be fixed, but will be subject to inflation escalation and fluctuation in the exchange rate and be exclusive of Value Added Tax unless the contrary is specifically indicated in the quotation.
4. PAYMENT OF PURCHASE PRICE
 - 4.1 Payments to the supplier shall be made without set-off or deduction,
 - 4.1.1 within 30 (thirty) days of the date of the invoice provided by the supplier to the customer; or
 - 4.1.2 in accordance with any other arrangement as stipulated in the quotation.
 - 4.2 Without prejudice to any of the rights of the supplier, if any payment is not made in full by the due date, the debt shall bear interest at the current rate of interest which is three percentage points above the prime interest rate charged on short term loans and facilities by the supplier's bankers. Interest shall be calculated from the date any such payment falls due until it is paid, compounded monthly in advance.
 - 4.3 In the event of a variation or suspension of work at the instance of the customer or as a result of a lack of instruction by the customer or as a result of delay caused by force majeure circumstances, the supplier shall be entitled to increase the contract price by a sum of money sufficient to cover the extra expenses incurred or sustained by it as a direct or indirect consequence of such variation or suspension or delay.
 - 4.4 In the event of the customer disputing any amounts due by it to the supplier, which dispute must be bona fide then the customer shall only be entitled to withhold payment of that amount in dispute and shall not be entitled to withhold the full payment then due by it to the supplier.
 - 4.5 A certificate produced and suitably signed by the supplier, detailing the invoice numbers, invoice dates, invoice amounts due, the interest rate applicable in terms hereof and the interest payable, shall be prima facie proof of the facts stated in such a certificate and will be binding upon the customer for purposes of obtaining summary judgement against the customer.
5. EXCHANGE RATE DIFFERENCES

The applicable currency of the contract shall be South African Rand and all prices shall be quoted in South African Rand unless stipulated otherwise in writing by the supplier in the quotation, and the customer shall accordingly carry the risk of or benefit from any fluctuations in the exchange rate.

6. DELIVERY AND OWNERSHIP

- 6.1 The time and manner of delivery shall be specified in the quotation.
- 6.2 Ownership of the goods shall only pass to the customer upon receipt by the supplier of full payment for the goods in accordance with the quotation.
- 6.3 If the supplier fails to complete the goods by the delivery date or any extended date to which he is entitled under the order, then the supplier shall pay to the customer by way of liquidated damages (in full and final satisfaction of its liability in respect of such delay) calculated at 0.5% of the value of the goods delayed for each week of delay up to a maximum of 5% of the price of the goods delayed, unless it can be reasonably concluded from the circumstances that the customer has suffered no loss. The payment by the supplier of such liquidated damages shall be in full satisfaction of the supplier's liability for the delay and to the exclusion of any other remedy of the customer for the supplier's delay.

6.4 Without prejudice to any of its rights in terms of this document or the law, the supplier reserves the right to repossess goods in the event of the customer failing to make any payment on due date or at all.

7. DELAYS IN DELIVERY

7.1 The supplier shall specify the delivery date(s) in the quotation, which dates will be confirmed by the supplier in writing once the quotation is accepted by the customer.

7.2 The supplier shall advise the customer in writing if it becomes apparent that delivery may be delayed and will provide details of, and reasons for such delay.

7.3 The supplier undertakes to make every reasonable effort to minimise delays in delivery.

7.4 Any times quoted for delivery are dependent upon receipt of all necessary information to enable the supplier to commence work and to proceed therewith without interruption. Whenever delay is caused by any instructions, or the lack thereof, by the customer, or as a result of industrial dispute or force majeure or any other cause whatsoever beyond the reasonable control of the supplier, the time for delivery shall be extended by a reasonable period and cost in the circumstances.

7.5 Unless specifically otherwise agreed between the supplier and the customer, where delivery of any works in terms of a contract is due and the supplier tenders such delivery and the customer is not ready for delivery or refuses to take delivery, delivery shall be deemed to have taken place and the supplier shall have the right, without detracting from any other legal remedies that the supplier may have in law, to act as if delivery had taken place and to issue an invoice for payment, which payment shall then become due in accordance with the agreed terms, to store the works at the customer's risk and cost, and to claim whatever costs and/or damages are incurred or sustained by the supplier as a result of the customer's failure or refusal to take delivery.

8. RISK

The customer shall be responsible for all loss of and/or damages to the goods arising from whatever cause from the date of delivery of the goods to the customer, or deemed delivery in accordance with clause 7.5, irrespective of the date when ownership passes to the customer.

9. RECEIPT AND ACCEPTANCE OF GOODS

9.1 The customer undertakes to accept delivery of the goods in accordance with the quotation.

9.2 The customer shall accept the goods with regards to quantity and quality, subject to the customer's right to inspect the goods in accordance with clause 13.

10. WARRANTIES

10.1 Subject to the provisions of 13, the supplier warrants that the goods shall be reasonably suitable for purpose, that they shall conform to and function in accordance with the specifications contained in the quotation and shall be free from defect of size, dimensions, design, material, manufacture and workmanship for a reasonable period after delivery, which the customer specifically agrees shall be for a period not in excess of 12 (twelve) months, or its remaining life if it is less than twelve months in the case of life limited components.

10.2 The warranty period is effective from the date of delivery of the goods.

10.3 If during the aforesaid period of the warranty, the warranted goods are found not to conform to, or function in accordance with the specifications, or to be defective through faulty design, workmanship, manufacture, size, dimensions or material, the warranted goods will be substituted, replaced or repaired within 90 (ninety) days from the date of notification to the supplier, at its own cost and expense, excluding the cost of transportation of the warranted goods.

10.4 The supplier shall have no liability in terms of the warranties contained in clause 10.1 above in the event that :

- 10.4.1 the characteristic, failure, defect or hazard that is alleged to be in breach of the warranties did not exist at the time of supply;
- 10.4.2 the goods have been altered or tampered with by the customer without the approval of the supplier;
- 10.4.3 the goods have been used under unsuitable operating conditions or for purposes not intended or have been abused by the customer;
- 10.4.4 the customer has failed to properly take care of and maintain the goods; or
- 10.4.5 the customer has failed to comply with any usage-and/or operating instructions provided by the supplier in respect of the goods.

- 10.5 The supplier's sole obligation arising out of any warranty or representation given by it shall be as stated in 10.1 – 10.3 above and shall exclude liability for all latent defects and all other warranties of whatsoever nature whether implied or based on common law.
11. LIMITATION OF LIABILITY
- 11.1 NOTE: The supplier's sole obligations and responsibilities to the customer in relation to the goods shall be in terms of the warranties as set out in clause 10, and furthermore insofar as the relevant transaction is subject to the provisions of section 61 of the CPA, to indemnify the customer against and to hold the customer harmless from, any harm arising from the death or personal injury suffered by the customer, and from the loss of or physical damage to property belonging to the customer, caused by the goods supplied by the supplier, subject to the limitation and/or exclusions and/or effects of sub-sections 61(4) and 61(6) of the CPA.
- 11.2 The supplier shall under no circumstances be liable towards the customer for any other losses, damages or harm of whatsoever nature, irrespective of whether such losses, damages or harm may have been caused by the fault of the supplier provided the supplier is not guilty of gross negligence.
- 11.3 In no circumstances whatsoever shall the liability of the supplier to the customer under these conditions for omission or default on behalf of the supplier exceed a sum equivalent to 100% of the contract price. The supplier shall under no circumstances be liable by way of indemnity, or by reason of any breach of contract or of statutory duty by reason of sort for any indirect or consequential damage, including but not limited to loss of income, loss of revenue, loss of profits, loss of use, loss of production, loss of contracts and any other economic loss.
- PLEASE TAKE NOTE:
- 11.4 THE CUSTOMER, BY ACCEPTING THE GOODS SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, ACKNOWLEDGES THAT THE CONTENTS OF THIS CLAUSE 11, INCLUDING THE LIMITATIONS CONTAINED HEREIN, HAVE BEEN SPECIFICALLY POINTED OUT BY THE SUPPLIER AND DRAWN TO THE ATTENTION OF THE CUSTOMER, THAT THE CUSTOMER HAS READ IT AND THAT IT FULLY UNDERSTANDS AND APPRECIATES THE IMPLICATIONS OF THIS CLAUSE 11, THAT IT HAD SUFFICIENT TIME TO CONSIDER THE ACCEPTABILITY OF THIS CLAUSE 11 BEFORE IT ENTERED INTO THE CONTRACT WITH THE SUPPLIER, AND THAT NOTWITHSTANDING THE PROVISIONS OF THIS CLAUSE 11 IT FREELY AND VOLUNTARILY DECIDED TO PROCEED WITH THE TRANSACTION TO WHICH THIS CLAUSE 11 APPLIES.
12. BREACH
- 12.1 If a Party ("the defaulting party") should breach any of the provisions of a contract, the other party ("the non-defaulting party") shall be entitled, by means of written notice given to the defaulting party to this effect, to call upon the defaulting party to remedy such breach within a period of 30 (thirty) days after the giving of such notice.
- 12.2 If such breach is not so remedied, or if the defaulting party is provisionally or finally liquidated or declared insolvent, or, being a company, is put under business rescue in terms of the Companies Act 71 of 2008, or enters into a compromise with its creditors, the non- defaulting party shall be entitled, without prejudice to any other right it may have in terms of or arising from the contract or at law (in particular any right to claim damages from the defaulting party) either to claim specific performance from the defaulting party, or to cancel the contract.
13. INSPECTION
- 13.1 The customer shall be entitled to inspect the quality of the goods at the supplier's premises.
- 13.2 If the goods are removed from the premises after an inspection as contemplated in 13.1, the customer thereby forfeits all its rights in respect of any defects in the goods that are patent or reasonably detectable with a visual inspection.
- 13.3 Subject to 11 above, the customer will retain the right, for a period of 21 (twenty one) days after removal of the goods from the supplier's premises (or in the case of 13.1, after detection of the defect) to –
- 13.3.1 reconcile such goods with the supplier's delivery note with regard to quantity;
- 13.3.2 reject such goods, or any portion thereof, based on latent defects which are not reasonably detectable with a visual inspection or otherwise found not in accordance with the quotation.
- 13.4 Rejected goods will be held at the risk and expense of the customer until such goods are returned to the supplier.
- 13.5 Other than in respect of the transport costs envisaged in 10.3 above, the customer shall not, upon return of goods in accordance with 13.4, be entitled to a refund of any other expenses incurred by it in respect of such goods.
14. CONFIDENTIALITY

The customer undertakes to keep the contents of the contract as well as any confidential information received by it, strictly confidential and not to disclose or divulge any details thereof to any unauthorised person. Without limitation, any documents, plans, sketches, drawings or other information furnished to the customer for the purposes of executing the contract is confidential, remains the property of the supplier and shall be returned on demand.

15. PATENTS AND COPYRIGHT

Except where the customer requires goods to be made in accordance with its own specifications, the supplier warrants that the goods do not infringe any patent, registered design, copyright or trademark and indemnifies the customer against all damages, loss or costs suffered by the customer in respect of the infringement of such patent, copyright or trademark. The customer warrants that any design or instructions furnished or given to the supplier shall not be such as shall cause the supplier to infringe any patent, registered design, copyright or trade mark in the execution of the order.

16. INTELLECTUAL PROPERTY

- 16.1 All intellectual property rights arising from designs and developments, as well as any rights, which may in future arise in respect of all improvements thereto, shall vest in the supplier.
- 16.2 The supplier shall have all rights to the value added intellectual property rights generated by the contract.
- 16.3 The customer may not use, sell, reproduce or in any way obtain benefit from the intellectual property rights directly or indirectly in any other way than in accordance with the contract.
- 16.4 The provisions of this clause shall remain in force notwithstanding termination or expiration of the contract for whatever reason.

17. VIS MAJOR

- 17.1 Neither party will be liable to the other for any failure, delay or default in the performance of its obligations under this agreement, if and to the extent that such failure, delay or default is caused by vis major including, (without detracting from any other events covered by the rules and principles relating to vis major), casus fortuitous, acts of God, strikes, lock-out, fire, riot, flood, drought, state of emergency), inability to secure power or materials or supplies, embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any requirements of any authority or other competent local authority, war (whether declared or not), civil disturbance, any circumstances beyond its reasonable control, Court order, or failures, shortages, interruptions or fluctuations in electrical power, water supply or communications (collectively, "Circumstances of Vis Major).
- 17.2 On the occurrence of any Circumstances of Vis Major, the party disabled thereby shall:
 - 17.2.1 as soon as reasonably possible, notify the other party thereof by whichever means available and if possible thereafter, confirm the notification in writing;
 - 17.2.2 be released from further performance or observance of its obligations so affected for so long as such Circumstances of Vis Major prevail;
 - 17.2.3 continue to endeavour to re-commence performance or observance whenever and to whatever extent reasonably possible without delay; and
 - 17.2.4 co-operate with the other party in implementing such contingency measures as the other party may reasonably require, until the Circumstances of Vis Major cease.
- 17.3 Should the circumstances of Vis Major continue or be likely to continue for any extended period of time, having regard to the nature of the affected obligation or obligations and the surrounding circumstances, then either party shall be entitled to terminate this agreement by giving written notice to the other party to that effect, subject to any other provisions contained in this agreement dealing with rights and obligations arising from termination, including but not limited to the payment of cancellation fees costs which will include all costs expended at the date of termination including a reasonable allowance for overhead and profit.

18. ACCEPTANCE CERTIFICATES

- 18.1 At the delivery of goods and/or the completion of the works or phases thereof the customer shall be required to sign an acceptance certificate in accordance with the provisions of this clause.
- 18.2 The acceptance certificate shall state in clear terms what portion of any work performed by the supplier the certificate relates, and shall state clearly the matters set out in clause 18.3 hereunder. The acceptance certificate shall be signed and dated by the authorised representative of the customer.
- 18.3 In the event that the works form part of a phase of a bigger project which is dependent upon any work and/or services to be performed by a third party, the customer shall not be entitled to refuse or delay the signing of an acceptance

certificate relating to the supplier's works, and shall be obliged to sign an acceptance certificate stating that although that phase is not completed, the supplier's works have been completed to the satisfaction of the customer. Should in such an event any testing of work provided by the supplier be required but could only be undertaken after the completion of a phase, the acceptance certificate so given shall state that it is subject to and dependant on the results of any such tests undertaken after the completion of the phase.

19. RETENTIONS

No retentions shall apply to any contract unless specifically agreed between the parties in writing and the customer shall under no circumstances be entitled to retain any portions of the contract price.

20. PENALTIES FOR LATE DELIVERY

- 20.1 The supplier shall not be liable for the payment of penalties unless specifically so agreed between the parties in writing.
- 20.2 Where penalties for late delivery are agreed between the parties, the amount of penalties shall be calculable on the value of the outstanding portion of the works only and shall form the customers sole remedy, in full and final satisfaction of the supplier's liability for late delivery.

21. LAW APPLICABLE

The Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

22. DOMICILIUM

As domicilium citandi et executandi for all purposes of the contract, the supplier selects its place of business situated at Unit 2, Cranberry Industrial Park, Cranberry Street, Laser Park, Honeydew, Johannesburg, and facsimile number as set out on the quotation. The customer selects as its domicilium citandi et executandi the address and facsimile number provided by it on the document in terms of which it accepts the quotation.

23. RELIEF FROM DUTIES UNDER THE ACT

- 23.1 The customer undertakes to take such steps as are sufficient, necessary and reasonably practicable in order to ensure that the goods supplied in terms of a contract, will be safe and without risks to health when properly used, and herewith releases the supplier from any duties imposed on the supplier by section 10 of the Act.
- 23.2 The supplier shall under no circumstances assume any liability for any health and safety hazards arising out of the misuse or abuse of the products manufactured, sold, imported or supplied by the supplier.

24. DUTIES UNDER THE CPA

In the event that the customer will not be the end user of the goods and will on-supply the goods to third party users, the following shall apply:

- 24.1 The customer hereby warrants that it is familiar with the provision of the CPA insofar as the supply of goods or services to "consumers", as defined in the CPA, is concerned, and the customer hereby agrees to comply with all the provisions of the CPA insofar as they relate to such consumers".
 - 24.2 Without detracting from the generality of the provisions of clause 24.1, the customer hereby undertakes with specific reference to sections 49 and 58 of the CPA, to provide "consumers" with all such notices as may be required in terms of the aforesaid sections 49 and 58, and to provide same in the manner and format prescribed by the CPA.
 - 24.3 The customer hereby indemnifies and agrees to hold the supplier harmless from, any claims, losses or liability made against, suffered by or established by any third party and user against the supplier, based upon or founded in the failure by the customer to comply with the provision of the aforesaid sections 49 and 58.
- #### 25. REQUIRED STANDARDS OF ETHICAL BUSINESS STANDARDS
- 25.1 The supplier adheres to the highest levels of lawful, ethical and responsible business conduct and it requires its subsidiaries, as well as suppliers, customers and stakeholders of the supplier, in their interaction with the supplier, to adhere to similar principles.
 - 25.2 The customer is referred to the supplier's Business Ethics Policy and Anti-Bribery that can be viewed on the supplier public internet website at <http://lucyelectric.com/en/terms-conditions/>

25.3 The customer confirms that it has read and understood the above mentioned policies and that it fully subscribes to the principles of ethical business conduct as are expressly or implicitly dealt with in the said policies. For the sake of clarity, the relevant principles are summarized as follows:

- Fair competition and avoidance of anti-competitive conduct
- Integrity in business dealings-no corruption or bribery
- Sustainability-no inappropriate risks for human health and the environment
- Equal opportunities in securities trading – no insider trader
- Proper record keeping and accurate financial reporting – no deception
- Fair and respectful working conditions – no discrimination
- Respecting the legal rights of others – no infringement of intellectual property rights
- No conflicts of interest between business and personal rights
- Co-operation with the authorities – no misinformation
- Compliance with laws, regulations, rules and standards
- Observations of ethical obligations without causing harm other than by fair commercial competitive practices
- Not to supply defective or dangerous products
- Not to improperly induce or influence someone by the provision of gifts, entertainment or other gratification
- To report any events or suspected events of bribery, corruption, improper inducement or influencing, or any other unlawful conduct.

25.4 Lucy Electric SA (Pty) Ltd distances itself from any conduct that deviates from the principles referred to in 25.3 above and it reserves the right not to deal with any party whose conduct is contrary to these principles. The supplier hereby reserves the right to terminate this contract forthwith in the event that any information comes to its attention which causes it to conclude, in its sole opinion, that in its conduct towards the supplier in terms of or in connection with this contract the customer has engaged in an act or omission which constitutes a material breach or disregard of the above mentioned principles of ethical business conduct. Such termination shall be justified and lawful and shall not be capable of giving rise to any damages claims against or any other liability for the supplier.

26. GENERAL

26.1 No alteration of, variation of, or addition to these terms and conditions shall be of any force or effect unless reduced to writing and signed by the parties duly authorised representatives.

SIGNED

AT.....this.....

day of20.....

.....

SIGNATURE (NAME IN BLOCK LETTERS)

.....

CAPACITY

BY MY SIGNATURE I CONFIRM THAT I HAVE READ AND AGREED TO THE ABOVE CONDITIONS AND I WARRANT THAT I AM AUTHORISED TO REPRESENT THE APPLICANT

.....

SIGNED AS WITNESS (NAME IN BLOCK LETTERS)



Lucy Electric South Africa (Proprietary) Ltd



engineering intelligent solutions
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