

STANDARD TERMS AND CONDITIONS OF PURCHASE



DEFINITIONS

For the purpose of these Conditions, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning, namely:

- “EII” means Electro Inductive Industries (Pty) Ltd, Registration No. 1999/019752/07, a private company with limited liability incorporated under the laws of the RSA;
- “Business Day” means any day other than a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994;
- “Conditions” means these standard terms and conditions of purchase and all the schedules hereto;
- “Customer” means any juristic or other person or entity placing an Order with EII.
- “Delivery Date” means the date specified in the Order by which the Goods are to be delivered by EII to the Customer;
- “Goods” means the goods specified in the Order;
- “Order” means an order for Goods placed by the Customer with EII in terms of these Conditions;
- “Price” means the purchase price of the Goods as specified in the Order;
- “RSA” means the Republic of South Africa, including the nine provinces identified in Section 103 of the Constitution of the Republic of South Africa Act, 1996;
- “VAT Act” means the Value Added Tax Act 89 of 1991 as amended;

EXTENT OF ORDER

These conditions govern all Orders placed with EII and **all contracts and sub-contracts** entered into by EII with the Customer for the purchase of any goods and services from EII, whether the Order arises out of an offer made by EII and accepted by the Customer, or an offer made by the Customer and accepted by EII including any such offer made by the Customer in response to a quotation supplied by EII, save where expressly varied or altered in writing and signed by or on behalf of both parties;

PAYMENT

The Price shall be paid in full by the Customer to EII immediately upon delivery of the goods to the Customer, unless otherwise agreed by both parties in writing;

Payment shall be made by **electronic funds transfer** into a bank account nominated in writing by EII;

The Price shall, unless otherwise stated, **include all taxes, levies and duties** of any kind payable by EII in connection with the sale of the Goods to the Customer in terms of these Conditions;

Invoices submitted to the Customer by EII in respect of each Order shall **contain the number of the Order** in question. **A separate delivery note** shall accompany all Goods delivered to the Customer;

If **full payment is not made** by the Customer to EII on the due date, any outstanding amount due to EII will **bear interest at a rate of 2.5% per month**;

All Orders are strictly net, and are not subject to any discount unless otherwise agreed to in writing, and authorised by an EII representative.

The parties agree that all Orders are subject to the express condition that **ownership in the Goods shall remain vested in EII until such time as full payment is made** by the Customer, notwithstanding the fact that the Customer may have already taken possession of the Goods ordered.

DELIVERY

Unless otherwise specified in the Order, and agreed to by both parties, **delivery of the Goods** shall take place to the Customer (ex-works) at EII's premises;

Unless otherwise agreed in writing by the parties, the Customer shall make all arrangements for and procure the **transportation of the Goods** from EII's premises;

Should it be agreed that EII make the arrangements for the transportation of the Goods, the Customer hereby **indemnifies EII from any loss or damage** that occurs to the Goods during the loading of the Goods, or once the Goods have left EII's premises;

All risks in the Goods shall pass to the Customer upon delivery of the Goods at the point of delivery referred to in 4.1.

WARRANTIES

EII warrants to the Customer that the goods shall:

- be free from any defects;
- be manufactured in accordance with sound principles and techniques, and be of the highest quality materials and workmanship;
- at all times comply with the general and/or specific requirements, plans, designs, specifications, drawings, samples, and other data submitted by the Customer to EII with any Order.
- Without prejudice to any rights or remedies available to the Customer arising from any provisions of these Conditions, the Customer indemnifies EII and holds it harmless against all:
 - loss or damage (including without being limited to consequential loss or loss of profit) which may directly or indirectly be sustained by the Customer;
 - loss, actions, costs, claims, demands, expenses, liabilities or any amounts whatsoever which may become payable by the Customer to any other person as a result of a claim made against the Customer;

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- resulting from any defect in the goods or any other breach of EII's warranties and/or obligations or undertakings as set out in these Conditions.
- All transformers that are manufactured and refurbished by EII will be guaranteed for a period of 12 (twelve) months from date of delivery.



PLANS, SPECIFICATIONS AND DRAWINGS

All Goods delivered by EII to the Customer in terms of 4.1 **shall conform with the requirements and stipulations** of the Customer and any plans, patterns, designs, specifications, drawings, samples, illustrations, models and other data supplied by the Customer to EII in respect of any Order.

The Customer will be responsible to pay to EII any additional amounts as agreed between the parties for any modifications that need to be made to the Goods while still in the manufacturing process.

TERMINATION

Should the Customer **cancel any Order** for any reason whatsoever, then all amounts owed by the Customer to EII in terms of the Contract or Order incorporating these Conditions shall become due and payable forthwith;

Should the Customer **default in the performance** of any term or condition of any Order, and fail to remedy such default within 5 (five) calendar days after receipt of written notice by EII requiring the Customer so to do, then EII shall be entitled, without prejudice to any other rights which it may have in law, immediately to terminate the Order in question in whole or in part, and/or to claim damages from the Customer;

Notwithstanding the generality of the foregoing, the Customer shall be deemed to be in default if the Customer:

- is an individual who dies or is sequestered or surrenders his estate; or
- is a partnership which is dissolved; or
- is a company or close corporation, which is placed under a provisional or final order of liquidation or judicial management; or
- compromises or attempts to compromise generally with any of the Customer's creditors.

FORCE MAJEURE

If EII is prevented or restricted directly or indirectly from carrying out all or any of its obligations under these conditions due to any cause beyond its reasonable control, including without limiting the generality of the foregoing any strike, lock-out, labour dispute or other industrial action, insurrection, sabotage, terrorism, civil commotion, political or civil disturbance, riot, invasion, war, threat of or preparation of war, fire, explosion, storm, flood, subsidence, epidemic or other natural or physical disaster or act of god, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, any act of any state or government or any other authority having jurisdiction over either party, then it **shall be relieved of its obligations** during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any of its obligations in terms of these Conditions or for any loss or damage (general, special or consequential) which the other party may suffer due to or resulting from such delay or failure, provided that written notice shall within 48 Hours of the occurrence constituting force majeure be given by the affected party to the other party concerned, and provided further that the obligations to give such notice shall be suspended to the extent necessitated by such force majeure.

ARBITRATION

Any dispute between the parties in regard to any matter arising out of any Order or its interpretation or their respective rights and obligations under any Order or its cancellation or any matter arising out of its cancellation, shall be **submitted to and determined by arbitration**. Such arbitration shall be held in **Cape Town** unless otherwise agreed to and shall be held in a summary manner with a view to it being completed as soon as possible.

There shall be **one arbitrator** whose appointment shall be agreed upon between the parties, but failing agreement between them within a period of 10 (ten) Business Days after the arbitration has been demanded, either of the parties shall be entitled to request the chairperson for the time being of the Cape Town Bar Council to make the appointment who, in making his appointment, shall have regard to the nature of the dispute.

The decision of the arbitrator shall be final and binding on the parties, and may be made an order of any court of competent jurisdiction. Each of the parties hereby submits itself to the Cape of Good Hope Provincial Division of the High Court of South Africa should the other party wish to make the arbitrator's decision an order of that Court.

DOMICILIUM CITANDI ET EXECUTANDI

Each party chooses the address set out opposite its name below as its domicilium citandi et executandi at which all notices, legal processes and other communications must be delivered for the purposes of these conditions:

- the Customer at the address and fax number displayed on this order;
- EII at the at the address and fax number displayed on this order.
- Any notice or communication required or permitted to be given in terms of these Conditions shall be valid and effective only if in writing, but it shall be competent to give notice by telefax. Any notice by telefax to a party at its telefax number shall be deemed, unless the contrary is proved, to have been received within 2 (two) hours of transmission where it is transmitted during normal business hours or within 2 (two) hours of the opening of business on the first Business Day after it is transmitted where it is transmitted outside those business hours.
- Any party may by written notice to the other parties change its chosen address to another physical address and/or its chosen telefax number to another telefax number, provided that the change shall become effective on the 10th Business Day after the receipt of the notice by the addressee.



Any notice to a party:

- contained in a correctly addressed envelope and sent by prepaid registered post to it at its chosen address, or
 - delivered by hand to a responsible person during ordinary business hours at its chosen address,
- shall be deemed to have been received, in the case of 10.4.1 on the 7th Business Day after posting and in the case of 10.4.2, on the day of delivery, unless the contrary is proved.



GOVERNING LAW

The validity of these Conditions, their interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of these Conditions or their performance shall be **determined in accordance with the laws of the RSA.**

JURISDICTION

Ei shall be entitled at its option to institute legal proceedings which might arise out of or in connection with any Order in any Magistrate's Court in the RSA having jurisdiction in respect of an Order notwithstanding that the claim or the value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court. The Customer hereby consents to the jurisdiction of the Magistrate's Court for the purpose of any proceedings instituted against it in terms hereof.

INTERPRETATION

In these Conditions, unless the context requires otherwise:

- words importing any one gender shall include the other two genders;
- the singular shall include the plural and vice versa;
- a reference to natural persons shall include created entities (corporate or unincorporated) and vice versa;
- any reference to any enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time; and
- when any number of days is prescribed in these Conditions that number of days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or official public holiday.
- In these Conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.

GENERAL

These Conditions read with each Order placed hereunder contain the entire agreement between the parties in relation to the subject matter hereof; The Customer shall not have any claim or right of action arising from any undertaking, representation or warranty not included in these Conditions read with each order placed hereunder;

No agreement to vary, add to or cancel, these Conditions shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to the order in question;

Each party warrants that it is acting as a principal and not as an agent for an undisclosed principal;

Neither party shall cede any of its rights or delegate any of its obligations under these Conditions;

No failure by either party to enforce any provision of these Conditions shall constitute a waiver of such provision or affect in any way that party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself;

Should one or more of the terms of these Conditions be held to be invalid or unenforceable for any reason whatsoever, the validity of any of the other terms of these Conditions shall not be affected thereby and such remaining terms as are applicable shall remain in force.

