

Johnson Controls Limited

Terms and Conditions of Supply

1. Definitions

"Applicable Laws" means the common law; all applicable statutes, all statutory instruments, proclamations, by-laws, regulations, orders, rules, statutory guidelines and other subsidiary legislation, and all treaties, directives, codes of practice, rulings, determinations, decisions and notifications having the force of law in the Republic of South Africa; with which the Buyer and/or the Seller are bound to comply with;

"Business Day" means any day except a Saturday, Sunday or official public holiday in the Republic of South Africa;

"Buyer" means the relevant Johnson Controls entity identified in the Order as the "Buyer", such entity being a company duly incorporated according to the laws of the Republic of South Africa.

"Confidential Information" means all Proprietary Information and Intellectual Property;

"Good Industry Practice" means in relation to the manner in which the Supplies are rendered, the standards, practices, methods and procedures conforming to Applicable Laws, and the exercise of that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances in South Africa;

"Intellectual Property" means any and all patents (whether registered or pending), designs (whether registered or pending), copyright, trademarks (whether registered or pending) designs, drawings, schematics, specifications, know-how, trade secrets, trade names, brands, logos, licences, all agreements and other pertinent documents, and all related information, all of which relate directly or indirectly to the business activities, of the Buyer and which vest in or have been acquired directly or indirectly, by or on behalf of the Buyer or for its benefit whether as proprietor or as authorised or lawfully permitted user of same, together with all future inventions, and all changes, developments or improvements, modifications and enhancements to the Intellectual Property described above which are discovered, developed or made during the term of

the Agreement by the Buyer or by any third party employed or contracted by or on behalf of the Buyer including but not limited to the Seller;

"Order" means the written document duly completed and issued by Buyer to the Seller in the form to which these Terms are attached and comprising an offer by the Buyer to the Seller to purchase the Supplies, subject always to the Terms;

"OHSA" means the Occupational Health and Safety Act No. 85 of 1993;

"Parties" means the Buyer and the Seller and **"Party"** means any one of them, as the context may require;

"Price" means the price the Buyer shall pay for the Supplies as stated in the Order which price shall be inclusive of VAT (to the extent that VAT is recoverable);

"Proprietary Information" means any and all information developed, compiled or otherwise acquired directly or indirectly by or on behalf of the Buyer for purposes of giving effect to and promoting the business activities and statutory obligations of the Buyer including but not limited to all reports, surveys, opinions, advice, proposals, strategies, plans, photographs and the like prepared or compiled for by or on behalf of the Buyer;

"Seller" means the Party who shall provide the Supplies identified in and pursuant to the Order to the Buyer;

"Supplies" means the goods and/or services to be provided by the Seller and specified in the Order;

"Terms" means these Terms and Conditions Of Supply; and

"VAT" means Value Added Tax in terms of the Value Added Tax Act, No. 89 of 1991 of the Republic of South Africa, as amended.

2. Offer and Acceptance

- 2.1 Each Order incorporates and is governed by the Terms which shall supersede any and all prior agreements, orders, quotations, proposals and other communications between the Parties relating to the Supplies specified in the Order

- 2.2 Any variation or modification of the Terms must be by written agreement of both Parties and expressly stated in the Order.
- 2.3 The Order does not constitute an acceptance of any offer or proposal made, by the Seller.
- 2.4 By doing any of the following, the Seller shall be deemed to accept the Order and the Terms, which acceptance shall give rise to a binding contract between the Parties (hereinafter referred to as "the Agreement"):
- (a) Commencing any work under the Order and/or providing any Supplies specified in the Order; or
 - (b) By signing and returning the Order to the Buyer whether by hand or by any other means specified in clause 26; or
 - (c) Any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order.
- 2.5 Any additional or different terms proposed by the Seller, whether in the Seller's quotation, acknowledgement, invoice or otherwise shall not form part of the Order nor the Agreement.

3. Duration

Subject to earlier termination by the Buyer, the Agreement is binding on the Parties for one year from the date of acceptance of the Order in terms of clause 2.4 or, if an expiration date is stated in the Order, until that date, provided that such termination or expiration shall not affect the continued operation of those provisions of the Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity and due to the inherent nature of such provision must continue to have effect after such termination or expiration notwithstanding that the provisions themselves do not expressly provide for this.

4. Quantities and Delivery

- 4.1 The Supplier shall supply the Supplies in the quantity and according to the specification described in each Order.
- 4.2 Unless expressly stated on the face of the Order, the Buyer shall be under no obligation to purchase Supplies exclusively from the Seller.
- 4.3 Unless otherwise agreed in writing by the Buyer, all and risk and title in and to the Supplies shall pass from the Seller to the Buyer upon delivery and/or performance (as applicable) of the Supplies to the address as specified in the Order.
- 4.4 Time for delivery of the Supplies is of the essence. The Buyer shall not be obligated to accept early deliveries, late deliveries, partial deliveries or extra deliveries.

- 4.5 The Seller shall be responsible for effecting or procuring the delivery of the Supplies to the Buyer.

- 4.6 The Seller must comply with all Applicable Laws relating to the Supplies including but not limited to manufacture, labelling, operation, use and delivery of all goods comprising the whole or part of the Supplies, and performance of all services comprising the whole or part of the Supplies. The Seller shall indemnify and reimburse the Buyer for any claims, losses and/or expenses incurred by the Buyer as a result of any breach of this clause 4.6.

5. Price and Payments

- 5.1 The Price shall be as stated in the Order and, unless stated otherwise, shall include delivery costs, storage, handling, packaging, insurance to cover all steps in the delivery process and all other expenses and charges of the Seller including all other duties and taxes, all of which must, to the extent applicable, be shown separately on Seller's invoice for each delivery of Supplies.
- 5.2 The Seller shall provide the the Buyer with a VAT invoice on or at any time after delivery of the Supplies but in any event not later than [30] days after delivery and each invoice shall quote the Price or, where delivery of the Supplies will take place in instalments or against milestones, the relevant portion thereof, the Order number, amendment or release number, the Buyer's part number if applicable, the Seller's part number if applicable, the quantity of Supplies if applicable (specifying the items), nthe number of cartons or containers in the delivery if applicable, and any other information required by the Buyer and specified in the Order..
- 5.3 VAT invoices shall be submitted to the address of the Buyer as specified on the Order.
- 5.4 Unless otherwise agreed by the Parties and stated in the Order, the Buyer shall pay the Price within 60 days of the last day of the month during which the Buyer receives the Seller's VAT invoice in terms of clause 5.2 above,
- 5.5 The Buyer shall be entitled to set off against the Price (including any VAT payable) any sums owed by the Seller to the Buyer under the Order or in terms of any other agreement between the Buyer and the Seller.

6. Inspection and Defective Supplies

- 6.1 If the whole or any part of Supplies are defective and consequently rejected by the Buyer, the quantities of Supplies under the Order will be reduced by the number of defective items unless the Buyer notifies the Seller otherwise.

6.2 In addition to any other remedies available to the Buyer, the Seller agrees to:

6.2.1 accept return of any defective Supplies, at the Seller's risk and expense including but not limited to all reasonable packaging, transportation and delivery expenses incurred by the Buyer, if any;

6.2.2 promptly replace all such defective Supplies as the Buyer requires within a period of 7 days from the date of written notification by the Buyer to the Seller that the whole or any portion or aspect of the Supplies being defective; and

6.2.3 indemnify the Buyer against any losses, third party claims, damages, liabilities and expenses incurred by the Buyer as a result of the whole or any portion or aspect of the Supplies being defective.

7. Changes

The Seller shall not make any change in the Supplies' design, specifications, processing, packing, packaging, marking, Price or date or place of delivery except at the Buyer's written instruction or with the Buyer's prior written approval.

8. Warranties

8.1 The Seller expressly warrants that the Supplies shall:

- (a) Conform to the specifications, standards, drawings, samples, descriptions and any revisions all as specified by the Buyer in the Order;
- (b) Conform to all Applicable Laws;
- (c) Be of good quality and free of defects (both latent and patent) including but not limited to any defects as to design, manufacture, operation, materials and workmanship;
- (d) Be fit for the Buyer's stated use and requirements and be fit and sufficient for the purposes for which the Buyer has procured them from the Seller; and
- (e) Any work or services comprising the whole or part of the Supplies shall be performed in a professional and workmanlike manner, consistent with all professional standards and specifications and otherwise consistent with industry standards and Good Industry Practice.

8.2 The warranties given by the Seller in clause 8.1 in respect of the Supplies shall endure for a period of three years from the date of delivery of the Supplies.

8.3 The Buyer's payment of the Price and/or its approval of any design, drawing, material, process

or specifications relating to the Supplies shall not relieve the Seller of any liability in relation to the warranties contained in clause 8.1 above.

9. Quality

9.1 The Seller shall conform to the reasonable quality control standards and inspection system of the Buyer

9.2 At the Buyer's request, the Seller shall make all service literature and any other materials relating to the Supplies which are considered necessary by the Buyer available to the Buyer free of charge.

10. Liability and Remedies

10.1 The Seller hereby undertakes to indemnify the Buyer against personal injury to or the death of any person in so far as such injury or death arises in the course of or by reason of the Seller, carrying out, or failing to comply with its obligations under the Agreement provided always and only to the extent that the same is due to negligence or breach of these Terms on the part of the Seller or negligence of the Seller's employees, agents, suppliers, contractors and/or sub-contractors,.

10.2 The Seller hereby undertakes to indemnify the Buyer and the Buyer's customers and all of their respective agents, successors and assigns, against all damages, losses (including consequential, indirect and economic forms of loss), claims, liabilities and expenses (including reasonable legal and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of the Seller or the Seller's agents, employees, contractors or sub-contractors, or any breach or failure by the Seller to comply with any of its obligations under the Agreement.

10.3 The rights and remedies reserved to the Buyer in terms of the Agreement shall be cumulative with and in addition to all other or legal remedies available to the Buyer.

11. Applicable Laws and Ethics

11.1 The Seller, and the Supplies shall comply with all Applicable Laws, and standards, relating to the manufacture, labelling, transport, import, export, licensing, approval or certification of the Supplies, including laws relating to anti-corruption, environmental matters, employment, discrimination, occupational health or safety and motor vehicle safety. The Agreement incorporates by reference all obligations and conditions thereby required.

11.2 The Seller shall use only legitimate and ethical business practises in the activities contemplated by the Agreement and shall not submit inflated or otherwise false VAT invoices to the Buyer. No part of the payments received by the Seller shall be used

for any purpose that could constitute a violation of any Applicable Laws or any anti corruption law including the U.S. Foreign Corrupt Practises Act to the extent that it is enforceable against either or both Parties.

11.3 The Buyer has established an Ethics Policy available at <http://www.johnsoncontrols.com/ethics> and the Seller, and the Seller's employees, agents, representatives and contractors, shall abide by this policy or an equivalent ethics policy of its own.

12. Insurance

12.1 The Seller will maintain the insurance coverage listed below or such other insurance cover as agreed between the Parties.

Type of Insurance	Minimum Limits
Commercial General Liability* insurance for bodily injury arising from premises, operations, personal injury, products/completed operations and contractual liability covering the indemnities required pursuant to the Liability and Remedies (Clause 10)	R50,000,000 Per Occurrence, General Aggregate, Product and Completed Operations Aggregate, Personal & Advertising Injury
Automobile Liability covering all autos used in connection with the work performed	R20,000,000 combined single limit covering property damage and bodily injury per occurrence or the limit mandated in terms of the Applicable Laws
Workers' Compensation/ Employee Injury	As required by the Applicable Laws
Employer's Liability	R10,000,000 each accident, each employee, each disease – policy limit or as required by the Applicable Laws
Professional Liability (if applicable)	R10,000,000 each claim
Blanket Fidelity Bond (Crime Insurance)	Where and as applicable

* Commercial General Liability limits may be met with a combination of General Liability and Umbrella/Excess Liability policy limits.

12.2 The Seller shall furnish to the Buyer proper evidence of such insurance cover within 10 days of the Buyer's written request.

12.3 The existence of insurance does not release the Seller from any or all of its obligations or liabilities under the Agreement.

12.4 Where insurance coverage and/or limits are mandated by the Applicable Laws, the same shall apply subject to the minimum limits stated above.

13. Termination

13.1 The Buyer may terminate the Agreement forthwith by written notice to the Seller in the following circumstances:-

- Where the Seller is in material breach of any of its obligations hereunder and fails to remedy the same within 10 days after receiving written notice thereof;
- Where the Seller ceases to trade or is wound up or compulsory or voluntary insolvency proceedings are initiated for the provisional or final liquidation of the Seller, or legal proceedings are initiated with a view to placing the Seller under judicial management; or
- Where the circumstances envisaged by clause 14.2 apply.

13.2 Upon termination, the Buyer shall be obligated to pay only the Price for all finished Supplies in the quantities ordered by Buyer which have been delivered to the Buyer and that conform to the Order.

13.3 Notwithstanding any other provision contained in this clause 13 and without detracting from the provisions of clause 11.2, the Buyer will have no obligation for and will not be required to pay the Seller, directly or on account of claims by the Seller's employees, agents, representatives, contractors or sub-contractors, for any indirect or consequential loss including any loss of profit, loss of production, loss of business, loss of contract, loss of revenue, and any unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that the Seller fabricates or procures in amounts exceeding those authorized in the Order, or general administrative burden charges arising from termination of the Agreement, except as otherwise expressly agreed.

13.4 The obligations contained in this clause 13 shall continue notwithstanding any termination of the Agreement.

14. Force Majeure

14.1 The Buyer shall not be responsible for any loss or damage of any kind occurring as a result of a failure of, or delay in, the performance of any of its obligations under the Agreement where such performance is delayed or prevented by

circumstances beyond its reasonable control and which have not been brought about at its insistence.

- 14.2 In the event that either Party is unable to or is delayed in or prevented from performing its obligations under the Agreement by reason or circumstances beyond its reasonable control and which it has not brought about at its insistence, for a period of more than 60 days, the Agreement shall terminate forthwith.

15. Information Rights

All intellectual property rights in all drawings, documents and other information which are compiled, developed and/or produced for or on behalf of the Buyer as part of or in the course of producing, rendering and supplying the Supplies in terms of this Agreement shall vest solely and entirely in the Buyer without the need for any further compensation by the Buyer.

16. Confidentiality

- 16.1 The Seller acknowledges that Confidential Information may be received from the Buyer and/or developed for the Buyer under in terms of the Agreement, regardless of whether such information is marked or identified as Confidential Information.
- 16.2 The Seller agrees and undertakes to keep all Confidential Information of the Buyer in the strictest confidence, and further agrees not to disclose or permit disclosure to others of Confidential Information save as required by any Applicable Laws, and not to use Confidential Information other than the purpose of fulfilling its obligations under the Agreement.

17. Section 37(2) Principles

- 17.1 The Seller acknowledges that it and any person employed by it or contracted by it shall enter the address referred to in clause 4.3 above entirely at its/their own risk.
- 17.2 The provision of the Supplies shall be conducted by the Seller in a safe and responsible manner and strictly on the terms agreed upon between the Parties and in accordance with all safety regulations applicable to the business of the Buyer and/or the Buyer's Customers and the Applicable Legislation, including but not limited to the OHSA and its regulations, ("Safety Regulations"), all of which the Seller warrants that it is fully conversant with.
- 17.3 The Seller agrees that it shall fulfill all the relevant obligations as an employer in terms of the OHSA and its regulations.
- 17.4 The Seller undertakes to ensure that the Supplies are provided in accordance with the provisions of

the Safety Regulations and, in particular, the OHSA and its regulations.

- 17.5 The Seller further undertakes that it will take all reasonable steps to ensure that its employees and any person contracted by it will at all times adhere to and comply with the Safety Regulations.
- 17.6 The Seller shall bear full responsibility for ensuring that the Safety Regulations are properly implemented in the areas designated for the provision of the Supplies and in respect of all aspects of the provision of the Supplies.
- 17.7 The Seller undertakes, in accordance with the Safety Regulations, to do all that is necessary to safeguard the health and safety of all its employees and any persons contracted by it working at the sites.
- 17.8 The Seller and/or its employees and any person contracted by it undertake to report to the Buyer any unsafe acts and conditions that may arise on the premises during the provision of the Supplies over which the Seller has no control, immediately upon such unsafe acts or conditions being observed by the Seller and/or its employees or persons contracted by it. The Buyer undertakes to take such steps necessary to rectify these conditions.
- 17.9 The Seller shall ensure that, where appropriate, its employees are insured against injury at work and are fully covered under the Compensation for Occupational Injuries and Diseases Act 180 of 1993, or any amendments thereto or replacements thereof, and shall produce documentary evidence to the Buyer of this including furnishing the Buyer with a "certificate of good standing".
- 17.10 Should the Seller or any one of its employees or any person contracted by it fail to adhere to the Safety Regulations, the Buyer may order that the provision of the Supplies be stopped pending compliance with the Safety Regulations. Any additional costs incurred due to such stoppage shall be for the Seller's account.
- 17.11 The Seller shall furnish the Buyer with the full particulars of any sub-contractor appointed by the Seller in respect of the Supplies and shall ensure that any such sub-contractor and all the employees or persons contracted by such sub-contractor abide the terms of this Agreement.
- 17.12 Where any permits are required to carry out the provision of the Supplies, the Seller shall obtain such permits and shall not commence the provision of the Supplies until such permits have been obtained and shall ensure that all the requirements of these permits are strictly complied with.

18. Publicity

The Seller shall not advertise, publish or disclose to third parties (other than to the Seller's professional advisors on a need-to-know basis) in any manner the fact that the Seller has contracted with the Buyer

to provide the Supplies or the terms of the Agreement, or use any Intellectual Property of the Buyer in any press release, advertising or promotional materials, without first obtaining the Buyer's written consent.

19. Relationship of Parties

The Seller and the Buyer are independent contracting parties and nothing in the Agreement shall be construed as constituting either Party the employee, agent or legal representative of the other Party for any purpose. The Agreement does not grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.

20. Assignment

The Seller shall not cede any of its rights or delegate any of its obligations under the Agreement without the Buyer's prior written consent.

21. Governing Law

The Agreement shall be construed and governed in all respects in accordance with the laws of the Republic of South Africa and any disputes or differences shall be subject to the exclusive jurisdiction of the South African courts.

22. Severability

If any term of the Agreement is invalid or unenforceable under any of the Applicable Laws the Parties shall negotiate in good faith to replace such term to the extent necessary to comply with the relevant Applicable Laws, provided that if the Parties fail to reach agreement on such replacement term, then the term in question shall be deemed to be severable from the Agreement which shall remain in full force and effect.

23. Waiver

The failure of either Party at any time to require performance by the other Party of any term of the Agreement will not affect the right to require performance at any later time, nor will the waiver of either Party of a breach of any term of the Agreement constitute a waiver of any later breach of the same or other term of the Agreement.

24. Survival

The expiration or termination of the Agreement shall not affect such of the provisions of the Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity and due to the inherent nature

of such provision must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

25. Third Party Rights

The provisions of the Agreement shall not constitute a *stipulatio alteri* in favour of any third parties

26. Notices

26.1 Any notice required to be given by a Party to the other in terms of the Agreement shall be given by means of a pre-paid registered letter to the address specified in clause 26.2 below or to such other address as such Party may notify to the other in writing. Any notice sent by pre-paid registered post shall be deemed (in the absence of evidence of earlier receipt) to have been received by the other Party seven days after despatch.

26.2 For the purposes of clause 26.1, the Parties relevant address are –

a) the Seller – the address of the Seller which is ascertained by the Buyer from the Seller and inserted in the Order by the Buyer, prior to such Order being issued by the Buyer to the Seller in terms of this Agreement.

b) the Buyer –

Street address: 60B Electron Avenue
Isando
Postal address: P O Box 469
Isando
1600
South Africa

27. Dispute Resolution

27.1 Save in respect of those provisions of the Terms which provide for their own remedies which would be incompatible with this clause 27 in the event of any dispute between the Parties in relation to any aspect of the Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) the Parties shall seek to resolve the dispute by negotiation.

27.2 The Parties shall meet and to attempt to resolve the dispute within 10 Business Days from date on which either Party notifies the other of the dispute.

27.3 If the Parties are unable to resolve the dispute within the said period of 10 Business Days either Party shall be entitled to refer the dispute to arbitration in terms of the remaining provisions of this clause 27.

27.4 The arbitration shall be held subject to the provisions of this clause 27:

- (a) at Johannesburg;
- (b) informally with only the Parties and their legal representatives present thereat;
- (c) otherwise in accordance with the Rules of the Arbitration Foundation of Southern Africa;
- (d) it being the intention that if possible the arbitration shall be held and concluded within 21 Business Days after it has been demanded.

27.5 The arbitrator shall be, if the matter in dispute is principally:

- (a) a legal matter, an impartial practising advocate of not less than 10 years standing, or an impartial admitted attorney of not less than 10 years standing;
- (b) an accounting matter, an impartial practising chartered accountant of not less than 10 years standing; and
- (c) any other matter, a suitably experienced independent person agreed upon between the Parties.

27.6 If the Parties fail to agree on an arbitrator within 3 days after the arbitration has been demanded, the arbitrator shall be nominated and appointed, at the request of either of the Parties, by the Secretariat of the Arbitration Foundation of Southern Africa (or the successor body thereto). If the Secretariat (or its successor) fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

27.7 If the Parties fail to agree whether the dispute is of a legal, accounting or technical nature within 3 days after the arbitration has been demanded, it shall be a matter referred to in clause 27.5 (c).

27.8 The Parties irrevocably agree that the decision in these arbitration proceedings:

- (a) shall be final and binding on them,
- (b) shall be carried into effect
- (c) may be enforced by making the arbitration order an order of any court of competent jurisdiction.

27.9 Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when any Party gives written notice to the other of the dispute and demands an arbitration.

27.10 The arbitrator shall be entitled to make an award even where a Party fails to participate fully or at all in the dispute.

27.11 The arbitrator shall determine the liability of the Parties for the arbitrator's costs.

27.12 The provisions of this clause 27 are severable from the rest of the Terms and shall remain in full force and effect even if the Agreement is terminated for any reason.