

CIRCUIT BREAKER INDUSTRIES LIMITED

AND

[insert name of Customer]

SALE OF GOODS AGREEMENT

SALE OF GOODS AGREEMENT

BETWEEN

CIRCUIT BREAKER INDUSTRIES LIMITED

Registration Number: 1943/015747/06

A company incorporated in the Republic of South Africa

HEREINAFTER REFERRED TO AS "CBI electric low voltage"

AND

[INSERT]

Registration Number: **[INSERT]**

A private company incorporated in the Republic of South Africa

HEREINAFTER REFERRED TO AS "the Customer"

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1. DEFINITIONS

In this document, unless otherwise required by the context, the following words and expressions shall have the meaning ascribed to them below:

Agreement	the agreement set out herein;
Business Day	any day other than a Saturday, Sunday or a day on which banking institutions in the Republic of South Africa are customarily closed;
CPA	the Consumer Protection Act, 68 of 2008;
Goods	[insert definition];
Parties	the parties to this Agreement and “Party” means either of them;
Signature Date	the date of signature of this Agreement by the Party signing last in time; and
South Africa	the Republic of South Africa.

2. INTERPRETATION

2.1 Clause headings in this Agreement are used for convenience only and shall be ignored in its interpretation.

2.2 In this Agreement, unless the contrary intention clearly appears:

2.2.1 any reference to an agreement or instrument is a reference to that or instrument as amended;

2.2.2 any reference to a Party shall include its successors in title, permitted assigns and permitted transferees;

2.2.3 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

2.2.4 any reference to the singular includes the plural and *vice versa*;

- 2.2.5 any reference to one gender includes the other gender; and
- 2.2.6 any reference to natural persons includes legal persons and *vice versa*.
- 2.3 When any number of days is prescribed in this Agreement same shall, unless otherwise specifically stated, be reckoned inclusively of the first and exclusively of the last day.
- 2.4 If any provision in a definition or in the recital to this Agreement is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that it is only the definition clause or recital, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 2.5 Where any matter is for the purposes of this Agreement to be to the satisfaction of or acceptable to a party, such party shall, in deciding whether such matter is to its satisfaction or acceptable, act reasonably. Where any matter requires the approval, consent or authority of a party, such approval, consent or authority shall not unreasonably be withheld or delayed.
- 2.6 Where words have been defined in the body of this Agreement, such words shall, unless otherwise required by the context, have the meanings so assigned to them throughout this Agreement.
- 2.7 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.

3. RECITAL

- 3.1 CBI electric low voltage agrees to sell the Goods to the Customer and the Customer agrees to purchase the Goods on the terms and conditions set out herein.
- 3.2 Unless otherwise specifically stipulated in writing to the contrary, the terms of this Agreement shall supersede and prevail over any terms and conditions contained in any documents submitted by the Customer.

4. THE CONSUMER PROTECTION ACT

- 4.1 The Customer warrants and represents that, to the extent that its activities are subject to the CPA, it shall ensure compliance with all provisions of the CPA in its dealings with consumers, irrespective of the provisions of this Agreement.
- 4.2 The Customer acknowledges and confirms that at the time of signing this Agreement, its annual turnover or asset value exceeds the threshold determination contemplated in section 6 the CPA, meaning that the transaction contemplated in terms of this Agreement is exempt from the majority of the provisions of the CPA ("Threshold Amount"). The Customer undertakes to notify CBI electric low voltage, in writing, as soon as there is a material change to its business which results in it falling below the Threshold Amount so that this Agreement can be amended to ensure compliance with the CPA.

5. PRICE AND PAYMENT

- 5.1 The ownership of all Goods supplied by CBI electric low voltage to the Customer shall remain vested in CBI electric low voltage until the purchase price in respect thereof has been paid in full.
- 5.2 The purchase price of Goods supplied by CBI electric low voltage to the Customer shall be paid by the Customer to CBI electric low voltage without any deduction or set off within the period of the agreed credit terms allowed to the Customer after the date of the statement submitted by CBI electric low voltage.
- 5.3 CBI electric low voltage shall be entitled to charge interest on all overdue amounts at the maximum rate permissible from time to time for credit transactions in terms of the National Credit Act, 2005 or equivalent legislation, as amended. Such interest shall be calculated and payable monthly in advance on the first day of each and every successive month on the balance outstanding from time to time by the Customer to CBI electric low voltage, and shall be added to the amount due to CBI electric low voltage by the Customer in respect of the purchase price of the Goods. All payments shall be appropriated firstly in respect of such interest and thereafter in respect of capital amounts payable, it being recorded and agreed that CBI electric low voltage shall be entitled to appropriate payments

received from the Customer to whichever of the Customer's debts as CBI electric low voltage may in its sole discretion elect.

- 5.4 Where any payment is effected by cheque or by electronic transfer or where any cheque is sent in the post, all risks arising from the use of a cheque, electronic transfer or the use of the post shall lie with the Customer who shall be liable for all damages/losses sustained as a result thereof. In the event that CBI electric low voltage shall agree to permit that payment be made by way of a letter of credit, such letter of credit shall be drawn on a bank acceptable to CBI electric low voltage and on terms and conditions as may be acceptable to CBI electric low voltage in its sole discretion.
- 5.5 The price of Goods sold to the Customer is strictly net and not subject to any discounts unless otherwise agreed upon in writing.
- 5.6 If any discount is agreed upon in writing it shall only be allowed if payment is received by CBI electric low voltage strictly by the due date and shall only apply to the actual price of the Goods themselves and not to any value added tax, transport costs, insurance, storage charges or other duties or taxes.
- 5.7 The price of Goods sold to customers includes the cost of packing the Goods for delivery.
- 5.8 Save where CBI electric low voltage furnishes the Customer with a quote for the price of the Goods in writing, the price of any Goods shall be the price stated in CBI electric low voltage's standard price list or export price list, as the case may be, in force at the date of delivery of the Goods.

6. DELIVERY

- 6.1 Goods sold for export shall be delivered FOB (Incoterms 2010) unless otherwise agreed between CBI electric low voltage and the Customer in writing.
- 6.2 Goods delivered in terms of CBI electric low voltage's local ordering policy within the Republic of South Africa, shall be delivered by CBI electric low voltage at CBI electric low voltage's cost, either by post to the Customer at the Customer's place

of business, or delivered by road or rail to the Customer's place of business. Any other form of delivery shall be for the Customer's account. Delivery shall be completed on signing the respective delivery notes when Goods are off loaded at the Customer's place of business.

- 6.3 CBI electric low voltage is authorised to engage a carrier on such terms and conditions as it deems fit.
- 6.4 The risk in the Goods shall pass to the Customer on delivery of the Goods.
- 6.5 The signature of any employee or agent of the Customer which appears on CBI electric low voltage's official note or way-bill or the delivery note of any authorised independent carrier shall constitute conclusive evidence of delivery of Goods purchased.
- 6.6 If more than one delivery is to be made, then the provisions of this clause 6 shall apply to each delivery.
- 6.7 CBI electric low voltage shall endeavour, at all times, to deliver the Goods by the desired delivery date, however, the time of delivery shall not be of the essence of the contract and the Customer shall not be entitled to cancel any agreement of sale should CBI electric low voltage fail to deliver the Goods on the desired date.
- 6.8 The sale of the items reflected on the invoice in question does not include installation costs unless otherwise specifically referred to.
- 6.9 If Goods are mailed, delivery will take place upon posting, even if the use of post was not authorised by the Customer.

7. LIMITATION OF LIABILITY

- 7.1 CBI electric low voltage shall in no circumstances whatsoever be liable for any loss of profit or any damage, direct or indirect, consequential or otherwise sustained by the Customer whether or not caused by the negligence of CBI electric low voltage, its agents or employees.

7.2 The Customer shall not have any claim of any nature whatsoever against CBI electric low voltage for any failure by CBI electric low voltage to carry out any of its obligations as a result of causes beyond CBI electric low voltage's control, including but not limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of CBI electric low voltage, riot, political or civil disturbances, the elements, any act of any State or Government, any delay in securing any permit, consent or approval required by CBI electric low voltage for the supply of Goods or any other authority or any other cause whatsoever beyond CBI electric low voltage's absolute and direct control.

7.3 CBI electric low voltage shall not be liable to the Customer for any loss or damage sustained by the Customer whether such loss or damage be direct, indirect, consequential or otherwise arising as a result of:

7.3.1 incorrect or late deliveries; or

7.3.2 failure to deliver the items to which this invoice relates caused by breakdowns in/of machinery, strikes, labour disputes, riot, civil commotions, accidents, orders or regulations of any government or authority, shortage of material, acts of God or any other causes either wholly or partly beyond CBI electric low voltage's control,

and a certificate signed by a director of CBI electric low voltage stating that a delay in delivery or a partial delivery was due to any cause beyond CBI electric low voltage's reasonable control or arising in the ordinary course of business and explaining the cause shall be prima facie proof that such cause existed.

7.4 Subject to the provisions of 7.5, all Goods are sold voetstoots (as it stands), and without any implied merchant's or manufacturer's warranties and the Customer shall have no claim whatsoever against CBI electric low voltage, whether in contract or in delict, for any loss or damage suffered by the Customer as a result of Goods being defective The Customer indemnifies CBI electric low voltage against any loss or liability incurred by CBI electric low voltage as a consequence of a claim by any person in terms of sections 56 and/or 61 of the CPA.

- 7.5 Subject to the provisions of 7.6, in the event that any defects in workmanship or materials appear in any Goods within one year from date of purchase and provided that CBI electric low voltage is notified in writing of the defect within such relevant period, CBI electric low voltage shall, as soon as it is reasonably able, repair or, in its sole discretion, replace, the defective Goods against return of such Goods, without any further claim for loss or damages of any nature whatsoever.
- 7.6 The provisions of 7.5 shall however not apply where:
- 7.6.1 a defect in any Goods is, in CBI electric low voltage's reasonable opinion, due to the unauthorised breaking of seals on, or the changing or adjustments in, or any other unauthorised modifications of the Goods in question;
 - 7.6.2 the order was for non-standard Goods and was not in writing or, if in writing, was not placed in accordance with the ordering procedure in operation at the time of purportedly placing the order; or
 - 7.6.3 the defect arose, in CBI electric low voltage's reasonable opinion, as a result of lightning, water, electromagnetic disturbances, dust or other environmental conditions, unless CBI electric low voltage has warranted to the Customer that the Goods in question were specifically designed to cater for such conditions or contingencies.
- 7.7 Should any Goods not conform with the specifications, measurements or instructions that CBI electric low voltage has undertaken, in writing, will be conformed with or should CBI electric low voltage have warranted, in writing, that any Goods will be suitable for a specific purpose and such Goods are not suitable for such purpose, then and in either of the aforesaid events, CBI electric low voltage shall, as soon as it is reasonably able, repair or, in its sole discretion, replace such defective Goods or refund the purchase price of such defective Goods against return of such Goods, provided that CBI electric low voltage is notified of such failure within 14 (fourteen) days of delivery of the Goods, or in the case of exported Goods, within 14 (fourteen) days of receipt of the Goods, it being recorded and agreed that the Customer shall have no further claim for any loss or damages of whatsoever nature suffered by it arising out of the aforesaid circumstances.

- 7.8 In the event that CBI electric low voltage has undertaken to install the Goods and the installation is defective, then CBI electric low voltage shall, as soon as it is reasonably able, repair the defect in such installation, provided that CBI electric low voltage has been notified in writing of the defect in installation within 14 (fourteen) days of the date of completion of such installation, it being recorded and agreed that the Customer shall have no further claim for any loss or damages of whatsoever nature suffered by it arising out of such defective installation.
- 7.9 Any advice or information (including drawings) relating to the Goods which are provided by CBI electric low voltage to the Customer must not be altered in any way by the Customer. The Customer undertakes to strictly adhere to all instructions by CBI electric low voltage regarding the transportation, storage and/or handling of the Goods.
- 7.10 If the Customer supplies Goods purchased from CBI electric low voltage without the necessary information or has altered the packaging and/or information in any way whatsoever without CBI electric low voltage's written consent, the Customer hereby indemnifies CBI electric low voltage against all claims which may arise as a result of any loss or damage whatsoever caused to the user of such Goods as a result thereof. CBI electric low voltage shall not be liable to the Customer, whether in contract or in delict for any loss or damage suffered by the Customer as a result of CBI electric low voltage furnishing to the Customer (whether by agreement or gratuitously) any incorrect advice or information in any form (including drawings), relating to the Goods.
- 7.11 In the event that CBI electric low voltage repairs or replaces any Goods or repairs any defective installation, it shall not incur a greater liability for such repaired or replacement Goods or repaired installation to the Customer than it would have incurred in respect of the original Goods or installation in accordance with these terms. The provisions of this clause 7.11 will apply, mutatis mutandis, in respect of repaired or replaced Goods which are not the original Goods but are themselves repaired or replacement Goods, irrespective of how many times an installation has been repaired before and irrespective of whether CBI electric low voltage is acting in terms of its contractual obligations or gratuitously.

7.12 In addition to clause 7.4, the Customer indemnifies and holds CBI electric low voltage harmless against:

7.12.1 any claim of any nature whatsoever by any third party for any loss or damage of any nature suffered by that person as a result of any Goods supplied by CBI electric low voltage being defective in any manner whatsoever; and

7.12.2 any costs incurred by CBI electric low voltage in dealing with such claim, including legal costs on the attorney and own client scale.

7.13 Where a benefit is conferred upon CBI electric low voltage in terms of this clause 7, the reference to CBI electric low voltage shall be deemed to include a reference to CBI electric low voltage's employees, servants, agents, sub-contractors and distributors, and CBI electric low voltage, on their behalf, accepts the benefits conferred upon them in terms of this clause 7.13.

8. DEFAULT

8.1 Should the Customer:

8.1.1 default in paying his/her/its account strictly on due date or commit a breach of any of the terms or conditions of this contract;

8.1.2 being an individual, die or be provisionally or finally sequestrated or surrender or make application to surrender his estate or commit any act of insolvency;

8.1.3 being a partnership, the partnership is dissolved;

8.1.4 being a company or close corporation, is placed under a provisional or final order or liquidation or judicial management;

8.1.5 have a judgment recorded against it which remains unsatisfied for seven days; or compromises or attempts to compromise generally with any of his/her/its creditors;

- 8.1.6 enter into any transaction which has the effect of changing the beneficial ownership of the Customer's business;
- 8.1.7 being a company or close corporation, enters into any transaction which has the effect of a change in the effective control of the company or corporation; or
- 8.1.8 to the extent that the CPA applies to its business, fails to comply with provision thereof;

then, without prejudice to any other right it might have:

- 8.1.9 CBI electric low voltage shall be entitled, but not compelled, forthwith to demand that all amounts outstanding by the Customer from whatsoever cause arising, be paid immediately; and
 - 8.1.10 CBI electric low voltage shall furthermore be entitled to cancel any agreement which exists between it and the Customer and suspend the carrying out of any of its then uncompleted obligations, in which event the Customer shall have no claim or claims of whatsoever nature against CBI electric low voltage arising out of such cancellation or the suspension by CBI electric low voltage to carry out any obligations.
- 8.2 CBI electric low voltage's rights in terms of 8.1 above shall not be exhaustive and shall be in addition to its common law rights.
- 8.3 No relaxation which CBI electric low voltage may have permitted on any occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of CBI electric low voltage's rights to enforce its obligations on any subsequent occasion.
- 8.4 Upon the cancellation of any contract between CBI electric low voltage and the Customer for any reason whatsoever:
- 8.4.1 all amounts then owed by the Customer to CBI electric low voltage from any cause whatsoever shall become due and payable forthwith; and
 - 8.4.2 CBI electric low voltage may retake possession of all Goods in respect of which ownership has not yet passed.

9. PERMITS

If any permit, licence or authorisation is required for the import of any Goods from the Republic of South Africa into the Customer's country or for the transport of such Goods then, subject to any terms of delivery which may be applicable, the Customer shall obtain the permit, licence or authorisation in question at its own cost.

10. PATENTS AND TRADEMARKS

CBI electric low voltage does not warrant that the use or sale by the Customer of any Goods supplied to the Customer by CBI electric low voltage will not infringe the rights of any person in respect of any patent, trademark, copyright or design used on or in connection with or existing in the Goods, and the Customer shall not have any claim against CBI electric low voltage, whether in contract or in delict (irrespective of the degree to which CBI electric low voltage may have been negligent) for loss or damage suffered by the Customer as a result of such infringement occurring.

11. RETURN OF GOODS

11.1 In the event that CBI electric low voltage shall in writing, in terms of an authorisation by a Director of CBI electric low voltage, agree to exchange any Goods or to examine any Goods to see whether CBI electric low voltage is prepared to exchange such Goods:

11.1.1 the Customer shall be liable to pay for the cost of delivering the Goods in question to CBI electric low voltage;

11.1.2 the Customer shall pay to CBI electric low voltage, in advance, a handling fee equal to 10% (ten percent) of the purchase price of such Goods, which handling fee shall also be payable in those circumstances where CBI electric low voltage shall refuse to repair or exchange such Goods; and

11.1.3 CBI electric low voltage shall not be liable to the Customer for any loss or damage of whatsoever nature suffered by the Customer in the event that

any Goods are lost or damaged while in CBI electric low voltage's possession and under CBI electric low voltage's control in the above circumstances.

12. RETURN OF GOODS FOR CREDIT

If, in the exercise of its discretion, CBI electric low voltage shall agree, in terms of an authorisation by a Director of CBI electric low voltage, at the request of the Customer, to accept the return of any Goods for credit, which Goods were correctly supplied by CBI electric low voltage and are not faulty or subject to any claim, then CBI electric low voltage shall be entitled without the necessity of any further agreement to claim from the Customer a handling charge of 10% (ten percent) of the invoice price of the Goods so returned.

13. JURISDICTION

13.1 The Customer submits itself to the jurisdiction of the South Gauteng High Court in respect of any matter arising out of or in connection with a contract of sale governed by these General Terms and Conditions of Sale.

13.2 Notwithstanding the provisions of 13.1 above, CBI electric low voltage shall be entitled but not obliged to institute any proceedings against the Customer in any Magistrate's Court having jurisdiction over the Customer even if the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate's Court. Further, the Customer agrees to be liable for all legal costs including costs on the scale as between attorney and his own client together with collection charges and tracing costs.

13.3 A certificate signed by any director or manager of CBI electric low voltage reflecting the amount due and owing by the Customer to CBI electric low voltage at any given time shall be prima facie evidence of the amount due by the Customer and such certificate shall be sufficient for purposes of judgment or provisional sentence or other legal proceedings.

14. DOMICILIA AND NOTICES

14.1 All notices to be given in connection with this Agreement shall be in writing and shall be delivered by hand, transmitted by facsimile or sent by prepaid registered post:

14.1.1 in the case of CBI electric low voltage at: Private bag 2016

Isando, 1600

facsimile number: (011) 392 2354

marked for the attention of: Brian Shaw

14.1.2 in the case of the Customer at: [INSERT]

facsimile number: (011) [INSERT]

marked for the attention of: [INSERT]

which physical addresses the parties select as their *domicilium citandi et executandi*.

14.2 The notice shall be deemed to have been duly given on delivery, if delivered to a responsible person during normal business hours at the Party's physical address in terms of 14.1 unless the contrary is proved.

14.3 Either Party may change its address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party, such address being effective on receipt by the addressee of such written notice.

14.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice or communication to such Party.

15. NEGOTIABLE INSTRUMENTS

Any promissory note, bill of exchange or other negotiable instrument received by CBI electric low voltage from the Customer shall not be a novation of the debt for which it is given and the Customer waives presentment, notice of dishonour and protest where applicable.

16. INSURANCE

16.1 The Customer shall at all times, in relation to Goods supplied where ownership thereof has not passed, keep the Goods sold to it adequately insured against all forms of loss.

16.2 Pending payment to CBI electric low voltage for Goods purchased, all benefits in terms of the insurance policy relating to the insurance of such Goods are hereby ceded to CBI electric low voltage.

17. APPLICABLE LAW

This agreement is governed by the laws of the Republic of South Africa.

18. BREACH

18.1 If the Customer commits a breach of any contract entered into between it and CBI electric low voltage and fails to remedy such breach upon the giving to it of 7 (seven) days notice to remedy the breach, then CBI electric low voltage may, without prejudice to any other rights it may have:

18.1.1 cancel any or all agreements existing between it and the Customer (including any agreement to grant credit); and/or

18.1.2 claim all amounts owing by the Customer from any cause whatsoever, even if any portion/s of such amounts are not yet due for payment; and/or

18.1.3 keep possession of any assets belonging to the Customer as security for the fulfilment of the Customer's obligations.

18.2 If the Customer:

18.2.1 is an individual and he dies or is provisionally sequestrated or surrenders his estate;

18.2.2 is a partnership and the partnership is terminated;

18.2.3 is a company or a close corporation and is placed under a provisional or final order of liquidation or judicial management or passes a resolution for its voluntary winding up; or

18.2.4 commits an act of insolvency,

the Customer shall be deemed to have committed a breach as contemplated in 18.1, in which event, CBI electric low voltage shall be entitled to exercise the same rights as are set out in 18.1.

19. GENERAL

19.1 No variation, alteration or consensual cancellation of any of these terms and conditions, and/or of any contract entered into between CBI electric low voltage and the Customer, shall be of any force or effect, unless in writing and signed by a Director of CBI electric low voltage and the Customer.

19.2 No waiver or abandonment by CBI electric low voltage of any of its rights in terms of these terms and conditions, and/or in terms of any contract entered into between CBI electric low voltage and the Customer, shall be binding on it unless such waiver or abandonment is in writing and signed by it.

19.3 No indulgence, extension of time, relaxation or latitude which CBI electric low voltage may show, grant or allow to the Customer shall constitute a waiver by it of any of its rights and CBI electric low voltage shall not thereby be prejudiced or estopped from exercising any of its rights against the Customer which may have arisen in the past or which might arise in the future.

19.4 The provisions hereof shall prevail over any terms and conditions which the Customer may purport to impose or apply and which are contrary to the terms hereof.

19.5 The Customer hereby acknowledges and agrees that information concerning the credit worthiness of the Customer may be disclosed to any registered credit bureau.

19.6 Each Party shall bear such Party's own legal costs of and incidental to the negotiation, settling, signing and implementation of this Agreement.

19.7 CBI electric low voltage shall not be bound by any undertakings, warranties, representations or any other terms and conditions which are not recorded in writing and signed by CBI electric low voltage.

19.8 In the event that the Parties do not sign the same document, then this Agreement may be executed by each Party signing a counterpart, which counterparts together shall constitute one and the same agreement.

Signed at _____ on _____

As Witnesses:-

1. _____

2. _____

for: **CIRCUIT BREAKERS
INDUSTRIES LIMITED**

Signed at _____ on _____

As Witnesses:-

1. _____

2. _____

for: **[INSERT NAME OF
CUSTOMER]**