

AGREEMENT OF LEASE
IN RESPECT OF
COMMERCIAL & INDUSTRIAL BUILDINGS

The hereinafter-mentioned Lessor and Lessee hereby enter into a Lease on the terms and conditions set out in the Schedule and the Annexure hereto.

SCHEDULE

1. Name of Lessor:

(Vendor No:)

Represented by:

2 2.1 Domicile Address of Lessor:

2.2 Postal Address of Lessor:

**3. 3.1 Name of the Lessee:
VAT No.**

**Eskom Rotek Industries SOC
4330196330**

3.2 Reg. No. /ID No.

1990/006897/30

4. 4.1 Domicilium address of Lessee:

**Roshland Office Park
Lower Germiston Road
Rosherville**

4.2 Postal address:

**P O Box 40868
Cleveland
2022**

5. Description of Premises:

1. Rental of Property at ;....:

1.1 Office Rental

1.2 Land rental

2. Rental of Property at

2.1 Land Rental

(b) Occupation date:

(c) Expiry date

7. **Period of Lease:** (Three) 3 years
8. **Rental per month (excl. VAT):** at award stage
9. **Annual escalation of Rental (Compounded):** As per the annual escalation of CPI
10. **Period of option of renewal – after expiry** ...N/A.....

Year *ONE* from to

Premises	Area m ²	Rate Per sq m	Rental per month (Excluding VAT)
<i>Rent - Office space</i>			
<i>Rent - Land</i>			

Year *TWO* from to

Premises	Area m ²	Rate Per sq m	Rental per month (Excluding VAT)
<i>Rent - Office space</i>			
<i>Rent - Land</i>			

Year *THREE* from to

Premises	Area m ²	Rate Per sq m	Rental per month (Excluding VAT)
<i>Rent - Office space</i>			
<i>Rent - Land</i>			

11. **Place at which rental and all other costs shall be paid:**

Name of account holder:

Bank:

Branch:

Account Nr:

Ref :

12. **The Trade or type of business to be exercised:** The leasing of Durban Depot for a period of 3 years.

SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES SET OUT BELOW:

DATE : _____

PLACE: _____

WITNESSES:

1. _____

For and on behalf of the LESSOR

2. _____

Full Names:

Address:

Tel :

Fax :

Email :

Mobile Nr:

DATE: _____

PLACE: _____

WITNESSES

1. _____

For and on behalf of the Lessee

2. _____

Full Names: In their capacity as:

Address: **P O Box 40868**
Cleveland, 2022

Tel No.

Fax. No.:

Email:

THIS IS THE ANNEXURE REFERRED TO IN THE DEED OF LEASE AND SCHEDULE ('THE SCHEDULE') ABOVE

1. DEFINITIONS

1.1 In this lease, unless the contrary intention shall clearly appear, the following words and phrases shall have the meanings set out hereunder-

The premises:	the premises described in item 5 of the Schedule;
The occupation date:	the date set out in item 6(b) of the Schedule:
Anniversary date	the occupation date set out in item 6(b) of the schedule.
The initial period:	the period set out in item 7 of the Schedule
The renewal period	the period set out in item 10 of the Schedule;
The building:	the building in which the premises are situated
The property:	the land on which the building is erected or is to be erected;
The assessment rates:	rates, taxes and other charges which are now or may be payable in the future by the Lessor to anybody or authority by virtue of the Lessor's ownership of the building or the property;
The commencement date:	the date set out in item 6(a) of the Schedule.
This lease:	the deed of lease, the Schedule and this Annexure:

1.2 words signifying the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter;

1.3 words importing natural persons shall include bodies corporate and vice versa;

1.4 words and phrases defined or used in the Schedule, shall have the same meaning in this Annexure and vice versa.

2. LETTING AND HIRING

The Lessor hereby lets to the Lessee, which hereby hires from the Lessor the premises on the terms and conditions herein contained.

3. COMMENCEMENT AND DURATION

- 3.1 Notwithstanding the date of signature hereof, the Lessee shall be deemed to have taken occupation on the occupation date and this lease shall be for a period as in item 7 of the Schedule reckoned from the occupation date.
- 3.2 The LESSOR must be informed in writing at least 3 (THREE) months before expiry of this lease of the LESSEE'S intention to extend or to terminate this lease.

4. BENEFICIAL OCCUPATION

- 4.1 Should the premises not be ready for beneficial occupation by the Lessee on the commencement date by reason of building operations, or repairs not having been completed or any other reason the Lessor shall notify the Lessee in writing of such delay as early as possible prior to the commencement date.
- 4.2 For the purpose, "beneficial occupation" shall mean that all building operations and/or repairs are complete or in progress as agreed by both parties.
- 4.3 The Lessee shall not be entitled to a remission of rental for the period from the commencement date to the date upon which the premises are ready for beneficial occupation and expiration date will not be extended accordingly.

5. RENTAL

- 5.1 The Lessee shall also be liable to pay Value Added Tax in addition to the rental provided for at a rate determined by the authorities from time to time. The LESSOR shall be liable to provide the lessee with a Vat Clearance Certificate before or on signing this agreement.
- 5.2 The rent shall escalate annually on the anniversary date of this lease at the rate set out in 9 of the Schedule. If the anniversary date for increase is another day except the 1st day of the month, then the actual date of escalation of rent shall be the first day of the following month.
- 5.3 The rental shall be payable free of bank exchange in the currency used in the Republic of South Africa to the Lessor at the address set out in item 12 of the Schedule or at such other place within the Republic of South Africa as the Lessor may from time to time, by written notice, appoint.
- 5.4 The Lessee shall not furnish a rental deposit/bank guarantee.
- 5.5 The Lessor shall install a lift at his own cost in the building within 6 months after signing this lease.
- 5.6 The Lessor shall be held liable for the installation of all air conditioning units.

6. USE OF PREMISES

- 6.1 The Lessee shall be entitled to use the premises for the purpose of conducting the trade set out in 13 of the Schedule and for such other purposes as the Lessor may approve in writing (which approval shall not be unreasonably withheld) and for no other purpose.

6.2 The Lessor does not warrant, and this Lease is not entered into on the premise that:-

6.2.1 the premises are, or will at any time be fit for the Lessee's business/trade or for any other purpose whatsoever;

6.2.2 the Lessee will be granted licenses, authority, consent or permits in respect of the premises for the conduct of the Lessee's business/trade, or that any such licenses, authority, consent or permits will be renewed from time to time. Should the Lessor be required during the currency of this lease to expend money on the premises in order to comply with the requirements of any relevant authority, and then the Lessor shall be entitled to adjust the rental accordingly.

7. CHARGES

7.1 The Lessee shall pay to the Lessor or to the supply authority:-

7.1.1 the charges in respect of the consumption of electricity and water in the premises as and when those charges may and demanded - after receive of an invoice.

7.1.2 all sanitary rates and all charges in connection with the removal of refuse from the premises.

7.2 The Lessor shall pay the assessment rates from time to time payable to any authority in respect of the property.

8. VARIATIONS IN ASSESSMENT RATES

Should the amount payable in respect of the assessment rates be increased or decreased after the commencement date, the monthly rental shall not be increased or decreased by the same amount in the event of the Lessee being the only tenant of the building, or, if the Lessee is not the only tenant, in the same proportion that the rental of premises bears to the rental value of the building.

9. SUB-LETTING AND ASSIGNMENT

The Lessee shall not cede or assign this lease or sub-let the premises without the prior written consent of the Lessor.

10. INSURANCE

The Lessee shall not do or omit to do anything if the act or omission may render void or avoidable any insurance policy held by the Lessor for the time in respect of the premises and/or the building, or may detrimentally affect the renewal terms of such insurance policy.

11. MAINTENANCE

11.1 During the currency of this lease, the Lessee shall maintain in good order and condition the interior of the premises and all parts thereof including (without limiting the generality of this obligation) all windows, walls, ceilings, lighting and air conditioning units, lift, together with all fixtures and fittings, and for such purpose shall carry out such repairs and maintenance as may be required. On the

termination of this lease the Lessee shall deliver to the Lessor the premises together with all fixtures and fittings in good order and repair, fair wear and tear excluded.

- 11.2 The Lessor shall maintain the exterior and the roof of the premises in good condition and for such purpose shall carry out such repairs and maintenance as may be required.
- 11.3 The Lessee shall at its expense replace or make good and repair, as the case may be, any fixtures and fittings which may be removed from the premises howsoever and by whomsoever during the currency of this lease.
- 11.4 The Lessor shall be entitled to carry out any maintenance and repairs, which the Lessee fails to effect and to recover the costs of such repairs from the lessee.

12 THE LESSEE'S GENERAL OBLIGATIONS

The Lessee shall:-

- 12.1 maintain adequate public liability insurance and produce proof thereof to the Lessor from time to time when so required by the Lessor;
- 12.2 not contravene or permit the contravention of any material law, by-law or statutory regulation or the material conditions of any license
- 12.3 relating to or affecting the occupation of the premises or the conduct of the Trade therein;
 - 12.3.1 any of the conditions of the title deed, deed of grant, certificate of permission to occupy or any other right under which the Lessor owns or holds the property; or
 - 12.3.2 any laws, which the Lessor is, required to observe by reason of its ownership or holding of, or other rights to the property, or any improvements thereon;
- 12.4 use its best endeavors to prevent any blockage of any sewerage or water pipes or drains in or used in connection with the premises and remove any such blockage which occurs in the premises at own cost.
- 12.5 save as is reasonably required for the proper conduct of the trade, not drive or permit to be driven any nails into the floors, walls or ceilings of the premises, or save as aforesaid, in any manner do or permit anything to be done that may damage the walls, floors or ceiling or any part of the premises;
- 12.6 not change or interfere with the electrical or other lighting and heating installations in the premises or any air-conditioning equipment or appliances therein without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, and shall ensure that the electricity supply is not overloaded;
- 12.7 be entitled to affix any signboards or neon signs or any other signs whatsoever to the roof, the walls or canopy fascia of the building with the written consent of the Lessor, which consent shall not be unreasonably withheld, and only on the conditions contained in consent so as to ensure that there is no detracting from the general uniform appearance of the roof or canopy fascia of the building in the event of such consent by the Lessor.

- 13.7.1. any wiring required for neon signs shall be paid for by the Lessee, which shall ensure that no damage is done to the building in the process thereof.
- 12.7.1 all sign-writing boards and signs shall be removed by the Lessee upon the expiration or earlier termination of this lease;
- 12.7.2 any damage caused to the building as a result of any such removal shall be made good at the Lessee's expense.
- 13.8. at all times keep the premises and any adjoining common area, yard or passages in a clean, tidy and sanitary condition;
- 13.9 not bring into or place any safe or other heavy machinery or items in the premises or in any part thereof which exceeds the permissible floor loading for the premises.
- 12.11 Have no claim or right of action of any nature whatsoever, whether for damages, or a remission of rent against the Lessor for any interruption for whatsoever reason in the supply of water, electricity, heating or any other service or amenity, but the Lessor undertakes to assist, if need be, in procuring the resumption of such services as soon as practicably possible;
- 12.12 to at any time do or permit anything to be done in the premises which may be or cause a nuisance or annoyance to the occupier of neighboring premises;
- 12.13 not store or leave or permit the storage or leaving of any goods, furniture or equipment outside the premises in the entrance or in the common areas, passages or on the landings of the building or in the yard and shall itself dispose of all cartons, boxes, packaging, waste, refuse and the like and at its own cost replace any locks and keys that may be lost, broken or damaged with the same quality of the keys, locks and glass as existed when the premises were handed over to the Lessee, fair wear and tear excepted.

14. **DEFECTS**

Should the Lessee on taking occupation of the premises discover that the premises or any of the fixtures and fittings or contents therein belonging to the Lessor are in a defective state or are not in conformity with the requirements of the agreement pursuant to which the parties entered into this lease, the Lessee shall within 10 (TEN) days of taking occupation notify the lessor of any such defects and failing such notification, the Lessee shall be deemed to have received the premises together with such appurtenances and contents in a state of good order and repair. Upon receipt of any such notification the Lessor shall remedy the defect or omission as soon as reasonably possible, having regard to the nature of the defect or omission and should the Lessor fail to do so, the Lessee shall be entitled to carry out the necessary work and to recover the cost of so doing from the Lessor.

15. **ALTERATIONS AND ADDITONS BY THE LESSEE**

The Lessee shall not have the right to effect any alterations or additions to the structure of the building unless prior consent by the Lessor. ..

As agreed the Lessee shall be responsible for the interior layout and all electrical plug point installations.

16. FIXTURES AND FITTINGS

- 16.1. The lessee shall, with the lessors consent, be entitled from time to time, erect in/on the premises such fixtures and fittings and equipment as may be required or necessary for the carrying on of the trade therein.
- 16.2. All fixtures, fittings, electrical and other equipment and installations (which terms shall include any air-conditioning plant and equipment therefore – as done and installed by the Lessee in the upgrading of the premises) placed or installed in the premises by the Lessee shall, notwithstanding that they may in a legal sense be fixtures, be and remained the Lessee's property which the Lessee shall be entitled to remove at or prior to the termination of this lease, provided always.
- 16.2.1. that they shall be capable of removal without structural or major damage to the building and/or premises; and
- 16.2.2. that any damage caused to the premises by such removal shall be made good by the Lessee, failing which the lessor shall be entitled to attend thereto and to claim payment of the cost thereof from the Lessee.
- 16.3. In the event of the lessee failing to remove such fixtures and fittings before the expiration of the lease the lessee shall remain liable for the monthly rental until such time that these fixtures and fittings have been removed by the lessee or the lessor.
- 16.4. The Lessee shall at his own expense, for the duration of this agreement, affect a policy of insurance to insure him and the premises in respect of public liability insurance.

17 THE LESSOR'S GENERAL DUTIES

The Lessor shall:-

- 17.1 be entitled at any time to repair, improve, alter or add to the building, the premises or any part thereof and for such purpose
- 17.1.1 to erect
- 17.1.1.1 the building equipment required for the carrying out of the work:
- 17.1.1.2 such other equipment or devices as may be required by law or which the Lessor's architect or other consultant considers reasonably necessary for the protection of any person or property against injury arising out of that work;
- 17.1.1.3 to such right of access to the premises as is reasonably necessary for the carrying out of that work.

- 17.2 not unnecessarily interfere with the carrying on of the Trade in the premises during the carrying out of the work referred to in 17.1 and shall carry out same as quickly as possible in the circumstances;
- 17.3 be entitled to show the inside of the premises to prospective tenants or purchasers of the premises or the property or purchasers to share capital of the Lessor or to officials of the Government or any instance involved in the financing of the premises at all reasonable times;
- 17.4 have the right from time to time to make and from time to time to vary, amend or add to rules and regulations (provided that same are not unreasonable) governing the relationship between tenants of the building in regard to:
- 17.4.1 any joint facilities which may exist in the building; and
 - 17.4.2 the use of joint common or open areas within the building
 - 17.4.2 the cleaning of common areas, passages, etc;
- 17.5 be entitled to affix to and to show on the windows of the premises "To Let" notices during the period of 4 (FOUR) months immediately preceding the expiration of this lease and during such period any incoming Lessee shall be entitled to exhibit on the windows and doors of the premises any notice that may be required in connection with any application for any license to carry on business in the premises.
- 17.6 be entitled to inspect the premises at all reasonable times;
- 17.7 not, unless otherwise agreed, be obliged to provide any cleaning or other services in the premises or the building
- 17.8.1 the Lessor shall supply general artificial lighting equipment in the Buildings, in such a manner that the average illumination at the working level is approximately 200 lux. The cost of such lighting shall form part of the cost of the Buildings and of improvements, provided that the lighting scheme, as proposed by the Lessor, is installed completely without any alterations. In the event of the aforementioned lighting scheme not being compatible with the Lessee's special lighting requirements, no lighting scheme shall be supplied by the Lessor and no cost, excluding any expenses in connection with the planning which the Lessor may have incurred with such lighting scheme, shall form part of the Cost of the Building and of Improvements.
- 17.8.2 The Lessor undertakes to provide all the normal electrical installations in those parts of the Buildings that are not production areas. The Lessor furthermore undertakes to provide one supply point on the main distribution board for machinery and equipment in the production area.
- The current carrying capacity of the supply point shall be sufficient to supply all the machinery and equipment intended for the factory area and shall also be able to provide for all reasonable future expansion. The Lessee shall advise the Lessor in writing, before the calculation of the and 17.8.1 before conclusion of this agreement, what his requirements and

future expansions in this regard are. The point of supply shall be protected by a circuit breaker and the outgoing terminal of the circuit breaker shall be regarded as the supply terminal. All additional equipment, e.g conductors, distribution boards, switch gear, etc shall be part of the Lessee's own equipment and shall be supplied and installed by the Lessee at its own expense. Such installation shall comply with all the relevant regulations, including:

- 17.8.2.1 the Machinery and Occupational Safety Act 6 of 1983, as amended;
- 17.8.2.2 the South African Institute of Electrical Engineers' standard regulations for the wiring of premises;
- 17.8.2.3 any local fire protection regulations

17.8.2 The Lessee shall not interfere with, add to or alter any electrical installations in the buildings without the prior written approval of the Lessor, having been obtained which consent shall not be unreasonably withheld.

17.9 At the expense of the LESSEE enter into comprehensive insurance for such risks, as the LESSOR may deem necessary in respect of the premises. The LESSOR shall maintain such insurance for such sums at such premiums and with such insurance companies as the LESSOR may in his sole discretion decide. The LESSEE shall discontinue from doing or cause to be done or store or use or allow anything, which may detrimentally affect or may be calculated to affect any insurance risks in terms of such policies. The LESSEE shall inform the LESSOR in writing of any circumstance, which may affect such risk.

17.10 THE LESSEE shall, on demand, indemnify the LESSOR against any expense, loss or damage sustained by the LESSOR as a consequence of a failure by the LESSEE to comply with any of the provisions of clause 15.

17.11 The LESSOR shall not occupy any part of the rented area, and/or allow anybody else to occupy or store materials etc in any part of the rental area as from the commencement of this lease. Eskom is not obliged to pay rent should the LESSOR allow deviation from this until such time such materials, equipment etc is removed. Eskom rental commences as from

18. DESTRUCTION OF PREMISES

18.1 In the event of the partial destruction of the premises by any cause whatsoever, other than such partial destruction caused by the lessee, the Lessor shall take steps as soon as may reasonably be possible for the repair thereof and the Lessee shall be entitled to an abatement of rental during the period from the date of such destruction to the date on which repair is completed, the amount of such abatement to be mutually agreed upon.

- 18.2 In the event of the total destruction of the premises by any cause whatsoever or the partial destruction thereof, other than partial or total destruction caused by the Lessee, to an extent making the premises substantially untenable, either party shall have the right to terminate this lease on written notice to the other. Should neither party thus terminate this lease, the Lessor shall reconstruct the premises as expeditiously as possible and the Lessee shall be absolved from the obligation to make payment of rental until the premises have been given to the Lessee.

In such event the period during which the Lessee has been deprived of such occupation shall be disregarded in calculating the term of this lease and the date of termination shall be extended accordingly.

- 18.3 If there is any dispute as to:-
- 18.3.1 whether the premises have been rendered substantially untenable; or
- 18.3.2 the amount of the remission of rental or the extent to which the Lessee is deprived of beneficial occupation and enjoyment of the premises, the decision of an architect agreed between the parties, or, failing agreement, appointed by the President of the Institute of Architects, who will act as an expert and not as an arbitrator and who shall determine the liability for the charges which shall be paid accordingly, shall be final and binding upon the parties.
- 18.4. The lessee shall be obliged to repair such partial or total destruction where same has been caused by any act or omission by him or anyone in his employ.

19. **BREACH**

Should the Lessee fail to make payment of any rental on the due date thereof, or should it commit a breach of any material term of this lease and fail to make payment of such rental or remedy such material breach within 7 (Seven) days of the receipt by it of a written notice delivered by hand or sent by registered post requiring it to make such payment or remedy such breach, the

Lessor shall be entitled, in addition to any other remedy which it may have, to forthwith declare this lease cancelled and terminated and to re-enter the premises without prejudice to any right of action or remedy for arrears of rent or otherwise which it may have by reason of any such breach of this lease or the cancellation thereof.

20. **LIMITATION OF LIABILITY**

- 20.1 The Lessee shall not under any circumstances, save in the event of a breach by the Lessor of its obligations in terms of 12.2, have any claim or right of action whatsoever against the Lessor for damages, loss or otherwise, nor shall it be entitled to withhold or defer other payment of rent for whatever reason.
- 20.2 The Lessor shall not, save in the event of a breach by the Lessor of its obligations in terms of 12.2, be responsible for any damage to or loss of any nature whatsoever, including by way of illustration and not limitation, any stock-in-trade, equipment, machinery, raw materials, papers or other articles kept in the premises

(whether the property of the Lessee or that of anyone else) by rain, hail, lightning or fire, or by reason of riots, strikes or state's enemies or as a result of theft or burglary with or without forcible entry or for any other cause whatsoever, nor shall the Lessor be responsible for any personal injury which may be sustained in or about the premises by any of the directors, servants, agents, customers or invitees of the Lessee, or any other person whomsoever or howsoever such injury may be caused, nothing excluded.

21. NOTICE AND DOMICILE

- 21.1 The Lessee chooses as its *domicilium citandi et executandi* the address set out in item 4 of the Schedule.

Any change of the said *domicilium citandi et executandi* shall be given to the Lessor in writing by delivery or by prepaid registered post.

- 21.2 The Lessor chooses as its *domicilium citandi et executandi* the address set out in item 2 of the Schedule. Any change of the said *domicilium citandi et executandi* shall be given to the Lessee in writing by delivery or by prepaid registered post.

22. JURISDICTION

The lessee hereby consents to the jurisdiction of the Magistrates Court of any district having jurisdiction in terms of the Magistrates Court Act, even if the amount of the indebtedness exceeds the jurisdictional limit of the Magistrates Court.

23. COSTS

- 23.1. The costs of drawing this lease and the stamp duty hereon shall be borne by the Lessee if applicable

24. OPTION OF RENEWAL

- 24.1 The Lessee shall have the right to renew this lease upon the terms and subject to the conditions set out below.
- 24.2. The period for which this lease may be so renewed is 36 months commencing on the date immediately following the date of expiry of the initial term of this lease.
- 24.3. All the terms of this lease shall continue to apply during the renewal period, save that the escalated rental shall be negotiated per annum.
- 24.4. The right of renewal shall be exercised by notice in writing from the Lessee to the Lessor given and received not later than 3(three)months alternatively 14 days in the case of a month to month lease, prior to the date on which the renewal period is to commence and shall lapse if not so exercised.
- 24.5 If the right of renewal is duly exercised, the renewal shall be negotiated between the two parties.

24.6. The Lessee may not, however, exercise the right of renewal while in breach or default of any of the terms of this lease.

24.7. If this lease does not endure at least for the full term for which it is initially contracted, the right of renewal shall lapse and any notice of exercise thereof given prior to such lapsing shall be null and void.

25. SOLE CONTRACT

This agreement contains all the terms and conditions of the contract between the parties and no representations, warranties, undertakings or promises of whatsoever nature which may have been made by any of the parties, their agents or servants other than those herein contained, shall be binding or enforceable against them.

26. CESSION AND DELEGATION OF RIGHTS AND LIABILITIES

Neither party hereto may cede and delegate any of its rights and obligations (including liabilities) under this Agreement to any person without the written consent of the other.

.Notwithstanding the above, the Lessee may on written notice to the other party cede and delegate its rights and obligations under this agreement to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry and the Electricity Distribution Industry