

Eaton Electrical Terms of Sale

Our Disclosures: Please read these Terms carefully before you sign. We draw your attention to:

- our privacy policy (on our website) which sets out how we will handle your personal information; and
- clause 16 (Liability) which sets out exclusions and limitations to our liability under these Terms.

1. General

- 1.1 These terms and conditions are between Eaton Electrical (Australia) Pty Ltd (ACN 000 050 644), or if you are entering into these Terms as a New Zealand entity or business, Eaton Industries Company (NZCN 284932, GST 48-218-105 ('Eaton', 'we', 'us' or 'our' and you, the person or entity stated in the Quote ('Purchaser', 'you' or 'your'), together the 'Parties' and each a 'Party'. Together, these terms and conditions and the Quote (attached to these Terms or the Quote) form the entire agreement under which we will provide the Goods and Services to you ('Terms').
- 1.2 Except to the extent otherwise agreed in writing, all Goods and Services will be supplied to the Purchaser by Eaton based on the applicable Quote and Order Acknowledgement (if any), issued by Eaton and these Terms.
- 1.3 For the avoidance of doubt, and except to the extent otherwise agreed, on acceptance of any Order by Eaton, a separate contract of sale will arise which will consist of the Order and these Terms, to the exclusion of any other terms and conditions proposed by the Purchaser or which may otherwise be referenced in the Order.

2. Definitions

- 2.1 In these Terms, unless the context otherwise requires, the following definitions apply:

ACL or Australian Consumer Law means the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth).

Consequential Loss means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise:

- (a) any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission; and/or
- (b) without limiting subclause (a), any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data.

However, the Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 15.1.

Force Majeure Event means an event beyond a Party's reasonable control, which may include an act of God, lightning, storm, flood, cyclone, fire, earthquake, explosion, act of public enemy or war, sabotage, blockade, revolution, riot, insurrection, civil commotion, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic, strike, lockout or industrial dispute.

Goods and Services means the goods and services to be provided by Eaton to the Purchaser set out in the applicable Quote and in accordance with these Terms.

Insolvency Event means when the Purchaser: (a) disposes of the whole or part of its assets, operations or business other than in the

ordinary course of business; (b) ceases to carry on business; (c) ceases to be able to pay its debts as they become due; (d) takes any step to enter into any arrangement between with its creditors; (e) has steps taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, controller or other like person over the whole or part of its assets, operations or business.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party to these Terms or otherwise.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Power Quality Equipment means products in the Power Quality portfolio and includes Uninterruptible Power Supplies, Power Distribution Units, batteries, Automatic Transfer Switches, Surge Protection Devices, Power Conditioners, Maintenance Bypass Switches, Network Management Cards, Direct Current Power Equipment and Enclosures, Telecom (DC&B) Series 2 VRLA Batteries, associated racks equipment and parts.

Price means the price set out in the Quote for the provision of the Goods and Services, as adjusted in accordance with these Terms, and includes all expenses and any deposit set out in the Quote.

Order means the Quote, the purchase order issued by the Purchaser and the Order Acknowledgement (if any) issued by Eaton.

Order Acknowledgement means Eaton's acceptance of the Purchaser's purchase order either by way of an order confirmation, or sending the Purchaser a copy of the Eaton Service Agreement as confirmation.

Quote means any quote or proposal provided by Eaton for the supply of Goods and which forms part of the Order.

Specifications means any specifications for the Goods and Services, and, if applicable, as further set out in an attachment to these Terms or the Quote.

Terms means these Terms and Conditions of Sale.

3. Acceptance

- 3.1 You have requested the Goods and Services set out in the Quote, and you are taken to accept these Terms by the earlier of:
- (a) signing and returning the Quote to us;
- (b) accepting the Quote online or sending an email to us accepting the Quote (expressly or impliedly);
- (c) instructing us to proceed with the provision of the Goods and Services;
- (d) issuing us a purchase order that references the Quote; and
- (e) making part of full payment of the Price (including any deposit).

4. Pricing

- 4.1 The price quoted by Eaton for the Goods and Services is based on the cost of supply as at the date of the Quote. A Quote is valid for thirty (30) days from the date of issue. Eaton may vary the price if the Purchaser changes any aspect of the supply under the Quote or otherwise fails to accept the Quote within the 30 day validity period.
- 4.2 The price quoted by Eaton is: (a) inclusive of all applicable import duties and taxes; (b) in local currency (AUD \$ or NZD \$, as appropriate); (c) exclusive of any Goods and Services Tax ('GST'), which shall be payable by the

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- Purchaser in addition to the price; and (d) inclusive of all shipping and freight costs, unless otherwise stated in the Order.
- 4.3 If the Quote specifies that all or part of the price is subject to foreign exchange rate variation and there is a decrease of 2.5% or more between the exchange rate set out in the Quote and the exchange rate applicable as at the time of delivery by Eaton (as published by the Reserve Bank of Australia), Eaton reserves the right to adjust the price on account of the exchange rate variation, and Eaton's invoice will be issued on delivery to reflect such changes to the price.
- 5. Goods and Services**
- 5.1 Eaton agrees to provide the Goods and Services to the Purchaser in accordance with these Terms (including any Specifications) and all applicable laws whether itself or through its Personnel.
- 5.2 Other than as set out in clause 4.3, all variations to the Goods and Services must be agreed in writing between the parties and will be priced in accordance with any schedule of rates provided by Eaton, or otherwise as reasonably agreed between the parties. If Eaton considers that any instruction or direction from the Purchaser constitutes a variation to the scope of Eaton's obligations under these Terms, then Eaton will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause.
- 6. Delivery Of Goods**
- 6.1 Unless otherwise agreed in the Quote, all Goods will be delivered by Eaton Ex Works (Incoterms 2020) from its warehouses.
- 6.2 On delivery, you must ensure that the Goods are in accordance with the Order. Any claim by the Purchaser for short or wrongful delivery must be made in writing within fourteen (14) days of delivery. Without limiting any of your Consumer Law Rights, you will be deemed to have fully accepted the Goods if notice is not provided within this period.
- 6.3 Eaton may, at its discretion, deliver the Order by instalments and each instalment will be deemed to be a separate Order. Any time quoted for delivery or performance is indicative only. We will use our commercial best endeavours to provide the Goods and Services by the dates set out in the Quote, or where no date is specified, then within a reasonable period of time.
- 6.4 We will have no liability (including a failure to meet any date referred to in clause 6.3) for delays caused by one or more of the following events or circumstances:
- a variation or deemed variation;
 - an act, omission or breach by you or any of your Personnel;
 - inclement weather;
 - delays in obtaining approvals for the Goods and Services from relevant authorities; and
 - any other event or circumstance beyond our reasonable control (including Force Majeure Events).
- 7. Held Orders**
- 7.1 If an Order is delayed or rescheduled at the Purchaser's request, Eaton may by notice to the Purchaser:
- require the Purchaser to reimburse its reasonable expenses incurred in connection with the delay; and/or
 - store Goods at the sole cost of the Purchaser, and the Purchaser must pay Eaton such expenses within thirty (30) days of receipt of Eaton's invoice for the same.
- 8. Service Delivery, Site Access and Service Scheduling**
- (preventative maintenance)**
- 8.1 Where an Order includes recurring Services such as preventative and comprehensive maintenance services, Eaton will provide the number of Service attendances each year during the Term as set out in the Order.
- 8.2 Unless otherwise agreed by the parties in connection with the Order, Services shall be carried out during normal working hours (8:00am – 5:00pm in the location the Services are being performed) and on working days to be mutually agreed with the Purchaser.
- 8.3 At the time of entry into the Order the Purchaser must provide to Eaton:
- current contact details for the Purchaser and end user (as applicable) at the site set out in the Order ('Site');
 - full details of the equipment to be serviced;
 - all relevant information about Site access and location of the equipment required to enable Eaton to access, locate and service the equipment,
- and the above information must be confirmed as current and correct by the Purchaser at the time of scheduling a Service attendance.
- 8.4 At the scheduled time for performance of the Services, the Purchaser must:
- make the equipment available to be serviced; and
 - ensure that the Site is unobstructed and can be fully accessed by Eaton in order to safely perform the Services at the scheduled time. Any Site induction, medical examinations, specific WHS requirements or documentation not specified in the Order, or onboarding requirements, training, or other requirements to be completed by Eaton's Personnel prior to the Services being performed will be at the Purchaser's time and cost, which will be calculated on Eaton's standard rates and informed to the Purchaser, unless otherwise agreed in the Order.
- 8.5 If the Purchaser wants to postpone a scheduled Service visit:
- it must give Eaton no less than 48 hours' notice of postponement. The Purchaser will be liable for all reasonable additional costs and expenses incurred by Eaton in rescheduling the Service in the event it fails to provide notice in accordance with this clause; and
 - Eaton will use its best endeavours to reschedule the date of attendance within the Term. Services attendances are not transferable outside of the current Term. If the parties are unable to agree a rescheduled date for the Services within the Term, then that Services attendance will be forfeited.
- 8.6 In addition to clauses 8.1-8.5, for all Services that are preventative maintenance services, the Purchaser must contact Eaton to schedule all Services, and the number of annual service attendances agreed in the Order must be completed within that 12 month period. If the Purchaser fails to:
- schedule and agree a suitable time for service attendance; or
 - make the Site available for the service attendance; or
 - enable Eaton to complete the service attendance within the relevant year,
- then the applicable preventative maintenance services will be deemed to have been provided by Eaton in full satisfaction of its obligations under the Order.

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9. Your Personnel and Your Items

- 9.1 You are responsible for the acts or omissions, and any goods or services provided by your Personnel. You agree to ensure your Personnel cooperate with us and do not interfere with the supply of the Goods and Services
- 9.2 You agree that any information, documentation, specifications, goods or services provided, or directions provided, by you or your Personnel in relation to the Goods and Services ("**Your Items**") will be:
- (a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;
 - (b) fit for purpose, of merchantable quality and compliant with all applicable laws; and
 - (c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws,
- and we will have no liability to you for any Liability, and you waive and release us from any such Liability, arising from Your Items.

10. Payment

- 10.1 In consideration for us providing the Goods and Services, you agree to pay us the Price in accordance with the Payment Terms (set out below).
- 10.2 Unless otherwise agreed in an Order and subject to clause 10.3, the Purchaser must pay Eaton's invoice for the Goods in full within thirty (30) days from the date of invoice ("**Payment Terms**").
- 10.3 Eaton may, in its discretion, require the Purchaser to pay for the Goods in advance or otherwise provide security in connection with the supply.
- 10.4 If installment payments are agreed for an Order and the Purchaser defaults under these Terms with respect to any installment then Eaton may treat the default as a breach of the entire Order and, without limiting or waiving any other rights it may have with respect to such default, withhold all future installments until such time as the default is rectified.

11. Risk and Title

- 11.1 Risk in the Goods will pass to the Purchaser in accordance with Ex Works (Incoterms 2020). Title in the Goods will not pass to the Purchaser until the Purchaser has made payment for the Goods in full. Until such time as payment is made in full, Eaton retains full legal title in the Goods supplied.
- 11.2 Until the Purchaser has paid for the Goods in full, the Purchaser must store the Goods separate from its own goods and mark them so that they can be identified as Eaton's property.
- 11.3 If the Goods (or any part of them) are converted into or incorporated in a new product or products ("**New Products**"), the New Products shall be the property of Eaton to the extent composed of Goods. The Purchaser's right to convert or incorporate the Goods in New Products automatically ceases if there is an Insolvency Event or if Eaton at any time revokes such rights by notice to the Purchaser.
- 11.4 The Purchaser may not sell or otherwise dispose of the Goods or New Products until the Goods are paid for in full unless:
- (a) they are sold by the Purchaser in the ordinary course of its business; and
 - (b) that part of the proceeds of sale Goods that represents the price payable for the Goods is paid immediately to Eaton. The Purchaser will hold those proceeds in trust for Eaton until such time as they are paid.
- 11.5 Prior to the Purchaser's payment in full for the Goods:
- (a) the Purchaser's right to on-sell Goods or New Products will cease automatically in the event of an Insolvency Event or if Eaton at any time revokes

- (b) if an Insolvency Event has or is likely to occur, the Purchaser must return Goods to Eaton immediately on demand. If the Purchaser fails to comply, Eaton is entitled to take immediate possession of the Goods, and in respect of New Products, is entitled either to the return of Goods or, if physical separation is not reasonably possible, to that part of the value of New Products attributable to the Goods.
- (c) if an Insolvency Event has or is likely to occur, the Purchaser irrevocably authorises Eaton's representatives to enter on any site where the Goods are located and take possession of the Goods without prior notice and the Purchaser indemnifies Eaton for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Eaton in connection with the retaking possession of Goods or the exercise by Eaton of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

12. Security Interest

- 12.1 The Purchaser acknowledges that Eaton has a security interest in the Goods and that prior to title in Goods passing to the Purchaser, the Purchaser must not grant any other security interests in the Goods except as permitted by Eaton in writing. The Purchaser further acknowledges that:
- (a) in New Zealand, Eaton may register a financing statement on the New Zealand Personal Property Securities Register in respect of such security interest. the Purchaser waives its right under section 145 of the *New Zealand Personal Property Securities Act 1999* ("**NZPPSA**") to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement. To the extent that Part 9 of the NZPPSA would otherwise apply to an enforcement by Eaton of its security interest in Goods, the parties agree that nothing in s. 114(a), 133 or 134 of the NZPPSA shall apply, and the Purchaser waives its rights under s. 117(1)(c), 121, 125, 129, 131 and 132 of the NZPPSA.
 - (b) in Australia, Eaton may register on the Australian Personal Property Securities Register ("**PPSR**") in respect of any and all such Security Interests. To the extent permitted by law but without limiting Eaton's other rights, in respect of each Security Interest created under Terms, the Purchaser and Eaton agree that sections 125(1), 130, 132(3)(d), 132(4), 135 and 143 of the *Australian Personal Property Securities Act 2009* ("**PPSA**"), do not apply to the Security Interest and are expressly contracted out of by the Purchaser and Eaton. the Purchaser waives its right to receive a copy of any verification statement relating to the registration of any financing statement or any related financing change statement in respect of the Security Interests created by these Terms, under section 157 of the PPSA. The Purchaser will promptly, on request from Eaton, execute all documents and do all things reasonably required to enable Eaton to register a financing statement on the PPSR to ensure that at all times Eaton has a perfected Security Interest in relation to all Security Interests granted by the Purchaser under these Terms and, if applicable a Purchase Money Security Interest in respect of the Goods.

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For the purposes of this clause, the terms "Security Interest", "financing statement", "Purchase Money Security Interest", and "verification statement" have the meaning given in the PPSA.

14.3

Consumer Law or any other applicable law.

Warranty for Goods (excluding Power Quality Products)

To the extent permitted by applicable law and unless otherwise agreed in an Order, Eaton warrants only that the Goods (excluding Power Quality Products) manufactured and supplied by it will conform to Eaton's standard commercial specifications (subject to Eaton's right to incorporate such minor modifications as appropriate or necessary to comply with any relevant laws) and will be free from failure due to defects in workmanship and material. This warranty will end at the earlier of twelve (12) months from the date of installation / commissioning of the Goods, and eighteen (18) months from the date of delivery (the 'Goods Warranty Period').

13. Return for Credit and Order Cancellations

13.1 Without limiting the Purchaser's Consumer Law Rights, if the Purchaser wants to return Goods for credit, other than for reason of breach of a warranty as set out at clause 14, then:

- (a) Eaton will not accept return of Goods for credit unless the return is first authorized by Eaton issuing a Return Material Authorisation ('RMA') number.
- (b) Goods will not be accepted for return unless they:
 - (i) are in original condition and packaging; and
 - (ii) have a value of more than \$100 (excluding GST) per unit; and
 - (iii) are less than twelve (12) months old; and
 - (iv) are in Eaton's current catalogue as at the date of return.
- (c) Proof of purchase must accompany any claim for credit.
- (d) Goods specially purchased or manufactured for the Purchaser and indent items will not be accepted for return.
- (e) A restocking fee equal to 20% of the value of the returned Goods must be paid by the Purchaser, unless otherwise agreed in writing by Eaton.
- (f) The Purchaser will be responsible for any and all freight costs, charges and expenses incurred in the return of goods for credit, including any risk of loss during transportation until received by Eaton.
- (g) If Eaton determines that the Goods returned are not acceptable for return, the Purchaser must arrange for the collection or disposal of rejected Goods. Eaton will dispose of Goods not collected within 30 days of a rejection letter.

14.4

Any claim during the Goods Warranty Period must be made in writing to Eaton. For any valid claim, Eaton will, at its option and discretion, either: (a) repair or replace the Good, or defective part or component thereof, FOB Eaton's facility freight prepaid; or (b) credit the Purchaser for the purchase price of the Goods. Eaton will not be liable for any additional costs, charge, loss or expense in connection with the Claim, including labour, access, removal and installation and transporting of the Goods.

14.5

Goods returned becomes Eaton's property. Repaired or replaced Goods will assume the unexpired Goods Warranty Period.

14.6

This warranty does not apply in relation to:

- (a) any Goods supplied but not manufactured by Eaton (if a manufacturer's warranty is supplied with these Goods, the manufacturer's warranty is solely provided by the manufacturer);
- (b) any Goods non-conforming by reason of the Purchaser's (or the Purchaser's customer's) act, omission or negligence in relation to the Goods not in conformance with Eaton's recommendations, equipment manual and industry standard practice (i.e. for storage and maintenance) or due to the Purchaser's (or the Purchaser's customer's or a third party's) accident, misuse, abuse or negligence;
- (c) any Goods non-conforming by reason of ordinary and expected cosmetic deterioration or wear and tear;
- (d) continued use of the Goods (where such use is not reasonable) after any defect in your Goods becomes apparent or would have become apparent to any prudent person;
- (e) incorporation or installation of other items into the Goods;
- (f) failure by you to notify us of any defect in the Goods within a reasonable time after you become aware or ought to have reasonable become aware of the relevant defects;
- (g) defects caused by environmental conditions (for example contamination, water, dust, corrosion, foreign objects, fire or animal activity);
- (h) defects arising from usage in conjunction with components not supplied by us;
- (i) a Force Majeure Event; and
- (j) installation, repair, replacement, maintenance, modification, augmenting, altering, overhauling or otherwise compromise of the Goods by you or any person other than us.

13.2 The Purchaser may not cancel any indent items or any items which are specifically manufactured or purchased for the Purchaser in a Purchase Order. The Purchaser may not cancel other Goods the subject of a Purchase Order unless the Purchaser pays Eaton a reasonable termination charge, which will include all milestone payments paid by the Purchaser and all costs and expenses incurred by Eaton in connection with the Order, including any direct manufacturing costs, up to the date of termination.

14. Warranties Against Defects

14.1 Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. Except for where you are purchasing Goods and Services from us as a New Zealand entity or business (i.e. you are a consumer as that term is defined in the *Consumer Guarantees Act 2003* (NZ)), for major failures with the Service, you are entitled:

- to cancel your Service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

Other than where you purchase Goods as a New Zealand entity or business, you are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

14.2 We provide the warranties against defects below in addition to any other rights or remedies you may have under the Australian

14.7

Warranty for Power Quality Products

The warranty under clauses 14.3-14.4 shall not apply to any Goods comprising Power Quality Products, which are warranted in accordance with the terms of the Power Quality Product Warranty Statement provided by Eaton to the Purchaser in connection with the Order. For the avoidance of doubt, and notwithstanding anything in these Terms to the contrary, any warranty provided by Eaton for Power Quality Products will be void if the equipment is

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damaged due to accident, fire, flood, lightning, vandalism, acts of God, the Purchaser's neglect, misuse, misapplication, incorrect connection or external damage, or if it has been repaired or altered by the Purchaser (or a third party) not authorised by Eaton in writing.

Warranty for Services

- 14.8 With respect to any services supplied by Eaton under these Terms, to the extent permitted by applicable law and unless otherwise agreed in an Order, Eaton warrants that the services will be performed in a professional and workmanlike manner and will be free from defect for a period of ninety (90) days from the completion of the services ('**Services Warranty Period**').
- 14.9 Any claim during the Services Warranty Period must be made in writing to Eaton. In the event of a valid claim:
- (a) Eaton will, as it considers necessary and appropriate, re-perform and correct those Services; and/or repair and replace defective materials or workmanship, at a time to be mutually agreed; and
 - (b) the Purchaser will, at its cost, provide Eaton with unobstructed access to the non-conforming services, as well as adequate free working space in the immediate vicinity of the non-conforming services and such facilities and systems, including, without limitation, docks, cranes and utility disconnects and connects, as may be necessary in order that Eaton may re-perform and/or correct the non-conforming services. The conduct of any tests must be mutually agreed by the parties and Eaton must be notified of, and may be present at, all tests conducted.
- 14.10 This warranty does not apply to any services that are non-conforming due to: (a) the Purchaser's (or the Purchaser's customer's or any third party's) act or omission other than in compliance with Eaton's recommendations and industry standard practice; (b) to the extent the claim arises as a result of the Purchaser's (or the Purchaser's customer's or any third party's) accident, misuse, abuse, neglect or negligence; (c) any defects in any equipment not supplied by Eaton; (d) continued use of the Services (where such use is not reasonable) after any defect in the Services becomes apparent or would have become apparent to a reasonably prudent person; or (e) failure by you to notify us of any defect in the Services within a reasonable period of time after you become aware of or ought to have reasonably become aware of the relevant defect; or (f) a Force Majeure Event.
- 14.11 Any services requested by you to be performed by us (including any services that are additional to repairs carried out by us pursuant to this clause 14 and deemed by us to not be covered under these warranties may incur additional charges, which we will advise you of prior to commencing those additional work or services. We are under no obligation to perform any additional services that you may request.

15. Consumer Law Rights

- 15.1 In some jurisdictions, you may have guarantees, rights or other remedies provided by law ('**Consumer Law Rights**'), and these Terms do not restrict your Consumer Law Rights.
- 15.2 If you accept these Terms in Australia, nothing in these Terms should be interpreted to exclude, restrict or modify the application of, or any rights or remedies you may have under, any part of the Australian Consumer Law.
- 15.3 If you accept these Terms in New Zealand, nothing in this Agreement should be interpreted to exclude, restrict or modify the application of, or any rights or remedies you may have under, any part of the *Consumer Guarantees Act 1993*. However, if you are a business, the parties agree that, to the maximum extent permitted by law, the *Consumer Guarantees Act 1993* and sections 9, 12A and 13 of the *Fair Trading Act 1986* do not apply to these Terms or the supply of our Goods and Services, and it is fair and reasonable that the parties are bound by these Terms (including this clause).

- 15.4 To the full extent permitted by law and subject to your Consumer Law Rights, we exclude all warranties, and all material, work and services (including the Goods and Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.

16. Limitation of Liability

Despite anything to the contrary, but subject to your Consumer Law Rights, to the maximum extent permitted by law:

- (a) neither Party will be liable for any Consequential Loss;
- (b) a Party's liability for any Liability under, arising from, or in connection with, these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (in respect of any failure by us to comply with relevant Consumer Law Rights) our Liability is limited (at our discretion) to:
 - (i) replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing the Goods or of supplying equivalent Goods;
 - (ii) the repair of the Goods, or the payment of the cost of having the Goods repaired; and/or
 - (iii) supplying the Services again or paying the cost of having the Services supplied again.
- (d) the total cumulative and aggregate liability for any Liability of Eaton arising from or related to any Order on any grounds whatsoever shall not exceed an amount equal to the value of the Goods on which such liability is based; and
- (e) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by any loss or damage which is the inevitable and unavoidable part of performing the Goods and Services.

17. Cybersecurity

- 17.1 Eaton is not responsible for a breach of data or electronic system security, including, but not limited to, a system intrusion or interference, virus or malicious code attack, loss of data, data theft, unauthorized access to confidential information and/or non-public personal information, hacking incident or any acts of data ransom, caused by any third-party equipment, modification made to Goods other than by Eaton, or failure by the Purchaser to comply with Eaton's Assemblies Cybersecurity Hardening Guidelines at www.eaton.com/assemblies-security (the '**Cybersecurity Guidelines**'). Eaton may revise the Cybersecurity Guidelines at any time without prior notice.
- 17.2 The Purchaser is responsible for obtaining (at the Purchaser's expense) assurances from third party suppliers with respect to cybersecurity for third party equipment.
- 17.3 As a condition of use and/or resale, the Purchaser shall direct all users of the Goods purchased to access the applicable accompanying Eaton End User License Agreement (EULA) and the Cybersecurity Guidelines, all of which are subject to change in terms and practices, at Eaton's discretion, at any time.

18. Termination

- 18.1 Where an Order is for the provision of:

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- (a) Goods, these Terms will continue until the Goods are supplied in accordance with the terms of these Terms, unless terminated earlier in accordance with its terms; and
- (b) Services, these Terms will continue for the time agreed in the Order, unless terminated earlier in accordance with its terms,
- (‘Order Duration’).**
- 18.2 These Terms will terminate immediately upon written notice by a Party (**‘Non-Defaulting Party’**), if:
- (a) the other Party (**‘Defaulting Party’**) breaches a material term of these Terms and that breach has not been remedied within 30 business days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) (to the extent permitted under the *Corporations Act 2001* (Cth)) any step is taken to enter into any arrangement between the Defaulting Party and its creditors, any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator or like person of the whole or any part of the Defaulting Party’s assets or business, the Defaulting Party is bankrupt, or the Defaulting Party is unable to pay its debts as they fall due.
- 18.3 Eaton may suspend or terminate all or part of the order without any liability to you, with immediate effect by written notice, if you, the Goods and/or the Service becomes subject to applicable export or import controls, sanctions, embargos or other trade restrictions which prohibit Eaton from fulfilling its obligations under these Terms. In such case, we will refund you any Price paid for the relevant Goods and Services.
- 18.4 Upon expiry or termination of these Terms;
- (a) we will immediately cease providing the Goods and Services;
- (b) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;
- (c) you are to pay for all Goods and Services provided prior to termination, including Goods and Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
- (d) by us pursuant to clause 18.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
- (e) you agree to grant us such rights of access to any premises where the Goods are located to allow us (or our Personnel) to recover or repossess any Goods belonging to us.
- 18.5 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.
- 18.6 This clause 18 will survive the termination or expiry of these Terms.
- 19. Default in Payment**
- 19.1 If the Purchaser fails to make any payment when due under these Terms, then, without prejudice to Eaton’s other remedies and rights:
- (a) Eaton may cease providing the Goods and Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so;
- (b) Eaton may charge interest at a rate equal to the Commonwealth Bank Corporation Loan & Overdraft Reference Rate, from time to time, per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date, in accordance with the Payment Terms;
- (c) all payments which are not yet due under any Order shall immediately become due and payable by the Purchaser; and
- (d) Eaton may recover or repossess any Goods belonging to us, and you agree to grant us such rights of access to allow us (or our Personnel) to do so and any reasonable collection expenses incurred by Eaton incurred in recovery of such overdue amount will be payable by the Purchaser.
- 19.2 If an Insolvency Event occurs, or Eaton believes, based on reasonable grounds, that the Purchaser may suffer an Insolvency Event at some point during the Order Duration, Eaton shall have the right to withhold further deliveries to the Purchaser and to cancel all outstanding Orders and retain any payments already made for Orders actually provided, in addition to any other right or remedy available to Eaton for the recovery of any moneys due or for any antecedent breach by the Purchaser.
- 20. No Resale Outside of ANZ (Semiconductors)**
- 20.1 Where an Order is for Goods consisting of semiconductor products, the Purchaser must not resell any such Goods outside of Australia or New Zealand on the basis that this may contravene the laws of the United States of America.
- 21. Intellectual Property Rights**
- 21.1 The Purchaser warrants that any design or instruction furnished to Eaton shall not cause Eaton to infringe any intellectual property rights (patents, registered designs, trademarks, copyright, confidential information and the like of any party) in the execution of Order and the Purchaser indemnifies Eaton against any infringement or unauthorized use of intellectual property rights arising out of Eaton executing the Order. The Purchaser acknowledges and agrees that the sale of Goods does not confer on the Purchaser any license of or rights to any of Eaton’s intellectual property.
- 22. Privacy**
- 22.1 Eaton collects and manages personal information in accordance with the *Privacy Act 1988* (Cth) in Australia and the *Privacy Act 2020* in New Zealand for the purposes of complying with its obligations under these Terms. If Eaton does not collect such information, Eaton may not be able to provide the Purchaser with Order requested.
- 22.2 The Purchaser agrees to comply with:
- (a) if operating in Australia, the *Privacy Act 1988* (Cth); or
- (b) if operating in New Zealand, the *Privacy Act 2020* (NZ).
- 22.3 Eaton may disclose personal information to its related bodies corporate (including to related bodies corporate located overseas such as in the United States of America), contractors or suppliers and to parties whom Eaton is required to disclose the information by law.
- 23. General**
- 23.1 **Subcontracting:** Eaton may, at its discretion, subcontract the production, manufacture or supply of the whole or any part of the Goods and Services to be supplied.
- 23.2 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party’s obligation to pay any amount that is due and payable to the other Party under these Terms.
- 23.3 **Waiver:** Failure by a Party to insist upon strict performance of any term, warranty or condition of these Terms shall not be deemed as a waiver of any rights.
- 23.4 **Notice:** Any notice given under these Terms must be in

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- writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 23.5 **Severance:** If any provision of these Terms is illegal, void or invalid, it will not affect the legality or validity or enforceability of any other provision of these Terms; and the offending provision will be deemed deleted from these Terms.
- 23.6 **Export Control:** Each Party shall comply with all applicable export control laws, regulations, and sanctions, including but not limited to those administered by the United Nations, European Union, United Kingdom, United States, Australia and New Zealand and each Party must not take any action which could place the other Party in breach of any such laws.
- 23.7 **Eaton Code of Ethics:** You agree to observe at all times Eaton's Code of Ethics and related policies, available at <https://www.eaton.com/us/en-us/company/ethics-compliance/policies.html>.
- 23.8 **Governing Law:** In respect of any Goods and Services supplied or performed in Australia, these Terms and any Order shall be governed by and construed in accordance with the laws of New South Wales and the Purchaser agrees to submit to the non-exclusive jurisdiction of the courts of New South Wales. For any Goods and Services supplied or performed in New Zealand, these Terms and any Order shall be governed by and construed in accordance with the laws of New Zealand and the Purchaser agrees to submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 23.9 **Disputes:** Neither Party may commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) ('Dispute') unless the Parties first meet (in good faith) to resolve the Dispute. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- If the Dispute is not resolved at that initial meeting:
- (a) where you accept these Terms in New Zealand, the Dispute is to be referred to mediation administered by the New Zealand Disputes Resolution Centre, who will decide the time, place and rules for mediation, and the costs of the mediation will be shared equally; or
 - (b) where you accept these Terms outside New Zealand, the Dispute is to be referred to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Sydney, NSW, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.
- The determination of the arbitrator will be final and binding.
- 23.10 **Relationship:** Nothing these Terms is intended to create an agency, partnership, joint venture employment or fiduciary relationship between the Parties.