

Eaton's Terms & Conditions of Sale

1. General

- 1.1 Except to the extent otherwise agreed in writing, all Goods will be supplied to the Purchaser by Eaton based on any Quote and Order Acknowledgement issued by Eaton and these Terms.
- 1.2 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, the following definitions apply:
- ACL** means the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth).
- Eaton, we or us** means either of the following entities as identified in the Order: Eaton Industries Pty Ltd (ACN 103 014 571), Cooper Electrical Australia Pty Ltd (ACN 000 050 644) or Eaton Industries Company (NZCN 284932, GST 48-218-105).
- Force Majeure Event** means an event beyond the control of Eaton, 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, epidemic, strike, lockout or industrial dispute whether or not Eaton is a party to it.
- Goods** means the products and / or the services that Eaton agrees to supply to the Purchaser in accordance with these Terms and as identified in the Order.
- Insolvency Event** means when the Purchaser: (a) is in default of the payment obligations under these Terms for more than seven (7) days; (b) disposes of the whole or part of its assets, operations or business other than in the ordinary course of business; (c) ceases to carry on business; (d) ceases to be able to pay its debts as they become due; (e) takes any step to enter into any arrangement between with its creditors; (f) 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.
- Order** means the Quote, the purchase order issued by the Purchaser and the Order Acknowledgement issued by Eaton.
- Order Acknowledgement** means Eaton's acceptance of the Purchaser's purchase order.
- Purchaser or you** means the party listed as the purchaser in the Order.
- Quote** means any quote or proposal provided by Eaton for the supply of Goods and which forms part of the Order.

3. Pricing

- 3.1 The price quoted by Eaton for the Goods 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.
- 3.2 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 Purchaser in addition to the price; and (d) inclusive of all shipping and freight costs, unless otherwise stated in the Order.
- 3.3 If:
- the Quote specifies that all or any part of the price is subject to foreign exchange rate variation; and
 - there is a decrease of 5% or more between the exchange rate set out in the Quote and the exchange rate applicable as at the date of the Purchaser's payment (as published by the Reserve Bank of

Australia),

then Eaton reserves the right to invoice the Purchaser for any increase to the price on account of the exchange rate variation.

4. Orders

- 4.1 The Order Acknowledgement will set out the price payable for the Order.
- 4.2 By written notice to the Purchaser, Eaton may decline an Order, in whole or in part, at any time prior to issue of the Order Acknowledgement. If Eaton declines an Order, it will have no further obligation or liability to the Purchaser with respect to that Order.
- 4.3 If you are a small business, you must acknowledge the Order Acknowledgement by returning a signed copy of the Order Acknowledgement to us within 3 business days ("**Acknowledgement**"). By the Acknowledgement, you agree to make full payment for the Order in accordance with clause 6. If you do not return an Acknowledgement, the Order is not accepted by Eaton and we are under no obligation and will have no further liability in respect of the Order.

5. Delivery and Performance

- 5.1 Unless otherwise agreed in the Order, all Goods will be delivered by Eaton ex-warehouse.
- 5.2 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, and time is of the essence in this regard. The Purchaser will be deemed to have fully accepted the Goods if notice is not provided within this period.
- 5.3 Eaton may, at its discretion, deliver the Order by instalments and each instalment will be deemed to be a separate Order. Failure of Eaton to deliver any installment shall not entitle the Purchaser to cancel the balance of the Order.
- 5.4 Any time quoted for delivery or performance is indicative only. Whilst Eaton will use all reasonable endeavours to meet any delivery or performance date set out in an order, Eaton shall not be liable for any loss or damage suffered by the Purchaser if Eaton is unable to meet those dates. Any reasonable delay in delivery or performance of Order shall not relieve the Purchaser from its obligation to accept or pay for the Goods.
- 5.5 If delivery or performance is delayed or prevented due to a Force Majeure Event, Eaton may, as it determines appropriate in the circumstances:
- extend the date of delivery or performance for such period reasonably necessary to overcome the Force Majeure Event; or
 - cancel the Order if determines that it will be unable to perform the Order as a result of the Force Majeure Event,
- and Eaton shall have no liability to the Purchaser whatsoever in the event of termination of the Order in the circumstances.

6. Held Orders

- 6.1 If an Order is delayed or rescheduled at the Purchaser's request, Eaton may:
- require the Purchaser to reimburse its reasonable expenses incurred in connection with the delay; and/or
 - store Goods at the sole cost and risk of loss of the Purchaser,
- and the Purchaser must pay Eaton such expenses within thirty (30) days of receipt of Eaton's invoice for the same.

7. Payment

- 7.1 Unless otherwise agreed in an Order and subject to cl. 7.2, the Purchaser must pay Eaton's invoice for the Goods in full within thirty (30) days from the date of invoice.
- 7.2 Eaton may, in its discretion, require the Purchaser to pay for the Goods in advance or otherwise provide security in

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connection with the supply in the form of a bank guarantee or cash deposit equal to 10% of the value of the Order.

- 7.3 Unless otherwise mutually agreed, the supply of the Goods by installment does not entitle the Purchaser to pay for those Goods by installments.
- 7.4 Notwithstanding cl. 7.3, 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.

8. Risk and Title

- 8.1 Risk in the Goods will pass to the Purchaser on delivery. 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.
- 8.2 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. The Purchaser must keep the Goods in good and merchantable condition and fully insure them against loss or damage however caused.
- 8.3 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.
- 8.4 The Purchaser may not sell or otherwise dispose of the Goods or New Products until the Goods are paid for in full unless:
- they are sold by the Purchaser in the ordinary course of its business; and
 - 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.
- 8.5 Prior to the Purchaser's payment in full for the Goods:
- 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 the power of sale by notice to the Purchaser;
 - 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; and
 - 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.

9. Security Interest

- 9.1 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:

- 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.
- 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 Sale 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 Sale Terms and, if applicable a Purchase Money Security Interest in respect of the Goods. 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.

10. Return for Credit

- 10.1 If the Purchaser wants to return Goods for credit, other than for reason of breach of warranty, then:
- Eaton will not accept return of Goods for credit unless the return is first authorized by Eaton issuing a Returned Goods Advice ('**RGA**') number.
 - Goods will not be accepted for return unless they:
 - are in original condition and packaging; and
 - have a value of more than \$100 (excluding GST) per unit; and
 - are less than twelve (12) months old; and
 - are in Eaton's current catalogue as at the date of return.
 - Proof of purchase must accompany any claim for credit.
 - Goods specially purchased or manufactured for the Purchaser and indent items will not be accepted for return.
 - 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.
 - 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.
 - 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.

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11. Warranties

Warranty for Goods

- 11.1 To the extent permitted by applicable law and unless otherwise agreed in an Order, Eaton warrants only that the Goods 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 for one (1) year from the date of installation of the Goods or eighteen (18) months from the date of delivery, whichever occurs first (the '**Warranty Period**').
- 11.2 Any claim during the 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 to for labour, access, removal and installation and transporting of the Goods
- 11.3 This warranty does not apply in relation to:
- any Good supplied but not manufactured by Eaton (these Good are warranted solely by the manufacturer and Eaton relies on the manufacturer's warranty);
 - any Good 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 and industry standard practice (i.e. for storage and maintenance) or due to the Purchaser's (or the Purchaser's customer's) accident, misuse, abuse or negligence; and
 - any Good non-conforming by reason of ordinary and expected deterioration or wear and tear.

Warranty for UPS Equipment

- 11.4 The warranty under cl. 11.1 to 11.3 shall not apply to any Goods comprising UPS equipment, which is warranted in accordance with the terms of the limited warranty 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 UPS equipment (including Power Module and any batteries) will be void if the equipment is 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 authorized by Eaton in writing.

Warranty for Services

- 11.5 With respect to any Goods comprising services, to the extent permitted by applicable law and unless otherwise agreed in an Order, Eaton warrants only that the Goods 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**').
- 11.6 Any claim during the Services Warranty Period must be made in writing to Eaton. In the event of a valid claim:
- 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
 - 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.

- 11.7 This warranty does not apply to any services that are non-conforming due to the Purchaser's (or the Purchaser's customer's) act or omission other than in compliance with Eaton's recommendations and industry standard practice or due to the Purchaser's (or the Purchaser's customer's) accident, misuse, abuse or negligence.

12. Limitation on Warranties

- 12.1 Certain legislation, including the ACL, may imply warranties or conditions or impose guarantees or obligations on Eaton which cannot be excluded, restricted or modified at all or to a limited extent.
- 12.2 The warranties above must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Eaton is entitled to do so, Eaton limits its liability in respect of any claim under those provisions to:
- in the case of goods, at Eaton's option:
 - the replacement of the Goods or the supply of equivalent goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - the payment of the cost of having the Goods repaired; and
 - in the case of Goods comprising services, at Eaton's option:
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.
- 12.3 To the full extent permitted by law and subject to the above, the foregoing warranties are the Purchaser's sole remedy and, except for warranty of title, there are no other express or implied warranties including any implied warranty of merchantable quality or fitness for purpose. Eaton's obligations under the warranties set out in these Terms are Eaton's sole liability for breach of warranty whether the Purchaser's claims are based in contract, in tort (including negligence or strict liability), or otherwise.

13. Statutory Rights

- 13.1 The following text has been included in accordance with s. 102 of the ACL: Our goods come with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. To the extent the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then we may limit our liability as we have done in cl. 12 of these Terms, in accordance with s. 64A of the ACL.

14. Limitation of Liability

- 14.1 Notwithstanding anything to the contrary in these Terms, to the full extent permitted by applicable law, the total cumulative and aggregate 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.
- 14.2 To the full extent permitted by law, Eaton will not be liable to the Purchaser in respect of any claim for any loss of profit, goodwill or business, for any interruption to business or for any consequential, indirect, special, punitive or incidental loss, whether in contract or in tort.

15. Indemnity

- 15.1 The Purchaser indemnifies and holds Eaton harmless from and against all claims, liabilities, losses, damages, costs or expenses incurred or suffered by Eaton, and from and against all actions, claims or demands made against Eaton, arising as

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a result of:

- (a) the Purchaser's failure to:
 - (i) ensure that any safety markings on the Goods are adequately displayed;
 - (ii) comply with any legislation as to the labeling or marking of the Goods;
 - (iii) take any other reasonable precautions either to bring to the attention of any potential users of the Goods any dangers associated with the Goods, or to detect any matters in relation to which Eaton may become liable, including, without limitation, liability under the ACL; or
 - (iv) otherwise comply with any laws, rules, standards or regulations applicable in relation to Goods or the use of the Goods;
- (b) any other negligence or other breach of duty by the Purchaser; or
- (c) any compliance or adherence by Eaton with any instructions of the Purchaser in relation to the Goods or their manner of fabrication.

16. Termination

- 16.1 The Purchaser may not cancel or vary an Order unless:
- (a) for Goods which are indent items or which are specifically manufactured or purchased for the Purchaser, the Purchaser gives no less than ninety (90) days written notice of its intention to cancel or vary the Order prior to the agreed date of delivery for the Order; and
 - (b) 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.

17. Default in Payment

- 17.1 If the Purchaser fails to make any payment when due, then, without prejudice to Eaton's other remedies and rights:
- (a) interest shall accrue on the amount of the overdue payment at a rate equivalent to the Commonwealth Bank Corporate Loan & Overdraft Reference Rates per annum calculated from the date payment was due;
 - (b) all payments which are not yet due under any Order shall immediately become due and payable by the Purchaser; and
 - (c) any collection expenses incurred by Eaton incurred in recovery of such overdue amount will be payable by the Purchaser.
- 17.2 If an Insolvency Event occurs, Eaton shall have the right to withhold further deliveries to the Purchaser and to cancel all outstanding Orders and retain any payments already made, 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.

18. No Resale Outside of Australia or New Zealand

- 18.1 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.

19. Purchaser Acknowledgements

- 19.1 the Purchaser acknowledges that (a) the Purchaser acknowledges that neither Eaton nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in these Terms; and (b) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption.

20. Intellectual Property Rights

- 20.1 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.

21. Privacy

- 21.1 Eaton collects and manages personal information in accordance with the Australian Privacy Act 1988 ("Privacy Act") for the purposes of supplying Order to the Purchaser. If Eaton does not collect such information, Eaton may not be able to provide the Purchaser with Order requested. 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. Where the Purchaser provides personal information (as defined in the Privacy Act) about its directors or employees or personnel to Eaton in the course of its dealings with Eaton, the Purchaser undertakes to notify the relevant director, employee or personnel that:
- (a) their personal information has been provided to Eaton and the purpose of that disclosure is to enable Eaton to supply Order to the Purchaser;
 - (b) they may request access to their personal information held by Eaton by writing to Eaton at the address set out at the end of these Sale Terms; and
 - (c) Eaton may disclose their personal information to its related bodies corporate (including those which are located outside of Australia), contractors or suppliers.

22. General

- 22.1 **Subcontracting:** Eaton may, at its discretion, subcontract the production, manufacture or supply of the whole or any part of the Goods to be supplied.
- 22.2 **Waiver:** Failure by Eaton to insist upon strict performance of any term, warranty or condition of these Terms shall not be deemed as a waiver of any rights Eaton may have and no express waiver shall be deemed a waiver in respect of any subsequent breach of these Terms.
- 22.3 **Notice:** All notices shall be deemed to be given on the date of receipt by the addressee. All notices or communications between the parties must be in writing and sent by mail, facsimile or email to the address indicated in Order.
- 22.4 **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.
- 22.5 **Governing Law:** In respect of any Goods 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 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.
- 22.6 **Relationship:** Nothing these Terms is intended to create an agency, partnership, joint venture employment or fiduciary relationship between the parties.