



Powering Business Worldwide

# Terms and Conditions

## 1. Object of Contract

This contract sets out the conditions under which Eaton Industries Pty Ltd ('Eaton') shall inspect and maintain the equipment owned by the customer, which is in good operating condition, both by routine monitoring and by action to remedy breakdowns.

**Customer** means the end-user of the equipment.

**Equipment** means the equipment sold by Eaton to the customer, whether direct to the customer or through a distributor, pursuant to Eaton's Terms and Conditions of Sale.

## 2. Nature of the Services

2.1 Eaton shall provide the following services to the customer:

(a) Checking the performance of the Equipment in accordance with the preventive maintenance schedule agreed between Eaton and the customer. Eaton shall after each scheduled preventive maintenance inspection, upon request, provide to the customer an inspection report. The times for the preventive maintenance inspections shall be established by mutual agreement, unless otherwise specified.

(b) Carrying out any work needed to remedy defects in the Equipment discovered during the inspections referred to in clause 2.1(a) within the stipulations of the relevant contract type (comprehensive or preventative maintenance). Where parts and labour are chargeable in relation to the service performed, these shall be charged at standard list price for spare parts and labour, less any deduction agreed in connection with the maintenance contract between Eaton and the Customer. The customer accepts these charges as a pre-condition to work being performed.

(c) Where the relevant contract type stipulates, supplying replacement parts during the inspections referred to in clause 2.1(a).

(d) At the request of the customer, remedying any failures of the Equipment. Eaton shall respond on site within the response time specified in the contract. Requests are to be notified by the Customer to Eaton on the National Service Hotline (1300 303 059). Calls will be answered within one hour of contact and attendance as stipulated by the contract type. Where the contract type is a comprehensive services agreement, the costs and charges of the service as set out in the contract schedule will be fully covered by Eaton. Any battery replacements are to be at the cost of the customer.

(e) Where Eaton is prevented for any reason beyond its control from providing any services referred to in this contract, the time for providing the services under clause 2.1(d) shall be extended by a reasonable period.

2.2 Eaton reserves the right to charge such additional costs as it considers appropriate when and if accepting work outside that contractually covered, including excessive travel, when a shorter site response time is required, and for any work which is caused by abnormal use or conditions including without limitation unsuitable environment, insufficient ventilation, abnormal accumulation of dirt, flood, fire, impact, earthquake, vibration, improper use of operation, operation at a power or voltage higher than that rated for the equipment, or short circuit on distribution with incorrect or inadequate protection (see clause 7).

2.3 Eaton's Terms and Conditions of Sale shall, subject to the provisions of this contract, apply to the sale of all parts supplied by Eaton pursuant to this contract.

## 3. Working Hours

3.1 Scheduled preventive maintenance visits and repairs shall be carried out during normal working hours, unless otherwise agreed under the contract. A 24-hour service is provided for technical advice and request of breakdown emergency calls (see clause 2.1(c)). On execution of the contract by the customer, a 1300 number will be activated for the customer's use and this number will be updated as necessary.

## 4. Price

4.1 The services provided by Eaton (other than those for which an additional charge is payable or which are at a cost to the customer) shall be rendered for the annual contract price stated overleaf, in respect of the first year of the contract.

4.2 The annual contract price as set out overleaf is payable in advance in one payment on the date of commencement of this contract, as shown over overleaf (**commencement date**).

4.3 Eaton shall, at least one month before each anniversary of the commencement date, notify the customer of any changes in the annual contract price in respect of the renewal of this contract for a further year. If the Customer wishes to renew the contract customer shall pay the annual contract price (and any changes thereto) within thirty (30) days of the anniversary of the commencement date.

## 5. Liability

5.1 The customer unconditionally and irrevocably indemnifies Eaton from and against all claims made or brought against, and all loss suffered or incurred by Eaton, whether arising directly or indirectly, incurred in connection with this contract or any amounts paid by the customer or any breach of this contract by the customer.

5.2 Certain legislation, including the Australian Consumer Law, may imply warranties or impose guarantees or obligations on Eaton which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This agreement must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Company is entitled to do so, Company limits its liability in respect of any claim under those provisions to:

- (a) in the case of goods, at Company's option:  
(i) the replacement of the goods or the supply of equivalent goods;

# Terms and Conditions for Maintenance Agreements

- (ii) the repair of the goods;  
(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or  
(iv) the payment of the cost of having the goods repaired; and  
(b) in the case of services, at Company's option:  
(i) the supplying of the services again; or  
(ii) the payment of the cost of having the services supplied again.

5.3 Subject to these statutory provisions and clause 5.2, if any liability on the part of Eaton arises to the customer for any reason for any loss, damage, harm or injury in any way connected with supply of the services, Eaton's liability shall be limited to payment by Eaton of a sum not exceeding the annual contract price and Eaton shall not be liable to the customer for any consequential loss of whatever nature.

## 6. Duration and Termination

6.1 The Term of the contract shall be as set out in the contract schedule. If no Term is specified, the Contract shall run for a period of one year beginning on the commencement date. This contract shall be renewed automatically from year to year to a maximum of five years, subject to clause 6.2 and 6.3.

6.2 This contract may be terminated by either party giving the other one month's written notice. Such notice must be given not less than one month prior to the anniversary of the commencement date.

6.3 Notwithstanding any other provision of this contract, Either party may immediately terminate this contract without notice if the other party is declared bankrupt, resolves to go into liquidation or has a petition of arrangement with its creditors or if any liquidator, if a receiver or official manager is appointed in respect of the other party, or if the other party is in breach of a provision of this contract and fails to remedy the breach within fourteen (14) days of notice in writing by the first party specifying the breach and requesting the second party to remedy it.

## 7. The Customer's Obligations

7.1 The customer shall on Eaton's directions and for the periods specified by Eaton cease to operate the equipment and shall take all necessary safety precautions to enable the services to be supplied, including without limitation providing an employee or agent of the customer to attend the servicing by Eaton of 'live' equipment at all times.

7.2 The customer shall provide free of charge and with ready access, working space, heat, light, ventilation, electricity and all relevant drawings and documentation concerning the equipment and its operation.

7.3 The customer shall not allow the equipment to be maintained, serviced or repaired by any person other than Eaton or Eaton-appointed agents while this contract is in force.

7.4 The customer shall comply with any instructions given by Eaton from time to time concerning the maintenance or use of the equipment and the keeping of a supply of replacement parts and shall ensure that the equipment complies with any relevant laws in existence from time to time.

## 8. Postponement and Interruption

8.1 If the customer fails to give Eaton at least 48 hours notice of any postponement or cancellation of any agreed time for maintenance, service or repair visits, all costs and expenses incurred by Eaton shall be borne by the customer.

8.2 Eaton will advise customer of scheduled maintenance service dates. Eaton will provide a window of 45 days to complete this work. Should customer prevent Eaton on site to complete this work, then Eaton cannot be held responsible in any way for subsequent breakdowns and service plan will need to be renegotiated.

## 10. Assignment

10.1 The customer may not assign any of its rights or obligations under this contract without the prior written consent of Eaton, with such consent not to be unreasonably withheld.

## 11. Eaton's Obligation

11.1 If the customer breaches a material provision of this contract Eaton shall not be bound to perform its obligations under the contract until the breach is remedied by the customer.

## 12. Proper Law

12.1 This contract shall be governed by the laws of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

## 13. Other Conditions

13.1 Other conditions are in accordance with Eaton's Terms and Conditions of Sale.

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