

General Terms and Conditions of Sale

1 SCOPE

- 1.1 These terms and conditions of sale ("Terms") apply to the supply of Goods or Services by ETEL to the person specified in the relevant Purchase Order as the buyer of the Goods or Services ("Buyer").
- 1.2 These Terms apply to the exclusion of any inconsistent terms proposed by the Buyer, included with a Buyer's order, or which the Buyer purports to apply to the supply of the Goods or Services.
- 1.3 In the event there is a conflict between these Terms and any terms shown in the relevant Purchase Order, these Terms will prevail.
- 1.4 From time to time, the Buyer may issue a Purchase Order to ETEL, and such Purchase Order:
 - (a) is an offer by the Buyer to purchase the relevant Goods or Services from ETEL, on these Terms, as at the date shown in the Purchase Order;
 - (b) may be accepted by ETEL by notifying the Buyer;
 - (c) upon acceptance, will form an individual and legally binding and enforceable contract between ETEL and the Buyer ("Contract") that is governed by these Terms.
- 1.5 Delivery of Goods or Services pursuant to a Buyer's order containing terms inconsistent with these Terms will be deemed a counteroffer and the Buyer's acceptance of the Goods or Services delivered will constitute the Buyer's acceptance of these Terms. ETEL's failure to enforce or delay in enforcing any part of these Terms shall not be deemed a waiver of these Terms unless agreed in writing by ETEL.
- 1.6 ETEL may require the Purchase Order to be in a specific form to be valid, including by requiring the Buyer to provide a Purchase Order in writing on a form supplied by ETEL.
- 1.7 ETEL may amend these Terms from time to time by publishing an amended version of these Terms on its website at <http://www.eteservices.co.nz/resources/terms-and-conditions-of-sale/> and the modified Terms will apply to all Contracts entered into after such modified Terms are published. No changes may be made to these Terms without ETEL's prior written consent.

2 PAYMENT TERMS, TITLE, RISK

- 2.1 ETEL may issue an invoice in accordance with any payment schedule specified in a Purchase Order. Where no payment schedule is specified:
 - (a) Goods may be invoiced prior to the Goods being despatched, which amount will be payable in full prior to, and as a condition of, the Goods being despatched; and
 - (b) Services may be invoiced on completion of those Services.
- 2.2 Notwithstanding clause 2.1(a), ETEL may in its discretion require payment of a deposit or progress payment (in part or full payment of the price of the Goods supplied to the Buyer) at any time prior to despatching the Goods to the Buyer (including, if specified by ETEL, prior to ETEL commencing manufacture of the Goods), in which case the Buyer must pay the amount specified on the invoice by the due date for payment specified on the invoice (or, if no date is specified, the 20th of the month following the date of invoice).
- 2.3 If ETEL has pre-approved the operation by the Buyer of a credit account and has specified on the relevant Purchase Order that the price of the Goods is payable other than prior to despatch, then ETEL may issue an invoice or invoices in accordance with the payment schedule contemplated, in which case the Buyer must pay the amount specified on the invoice by the due date specified for payment on the invoice (or, if no date is specified, the 20th of the month following the date of invoice or and in accordance with such other credit terms previously approved by ETEL in writing).
- 2.4 If the Buyer fails to pay any amount owing to ETEL by the due date, ETEL may charge the Buyer default interest on any overdue amount at the rate of 5% above ETEL's banker's current overdraft rate per annum, which interest shall accrue on a daily basis from the due date for payment until all amounts owing are paid in full and shall be payable on demand.
- 2.5 All payments due to ETEL are to be made in full on the due date without deduction of any nature whatsoever whether by way of set off, counterclaim or other equitable or lawful claim or otherwise.
- 2.6 If the Buyer makes a payment by credit card, the Buyer shall also pay any credit card fees associated with that payment to ETEL.
- 2.7 Unless otherwise agreed in writing, Goods are supplied ex-works at the place of manufacture, and delivery to the carrier's vehicle, including

loading, shall constitute delivery of the Goods by ETEL to the Buyer ("Delivery").

- 2.8 ETEL may charge and the Buyer must pay costs incurred by ETEL in connection with a delay in unloading the Goods, or failure to unload the Goods, following Delivery.
- 2.9 Title to the Goods will remain with ETEL until ETEL has received in full the price for such Goods.
- 2.10 The risk of loss or damage to Goods will pass on Delivery and, unless otherwise agreed by ETEL in writing, ETEL will not be liable for:
 - (a) any loss or damage to the Goods arising in connection with the offloading of the Goods following Delivery;
 - (b) without prejudice to clause 6.2, any costs and charges arising in connection with the Goods, including costs to unload the Goods to the Buyer's site, following Delivery.
- 2.11 Risk in any Goods or equipment which are the subject of repair, overhaul, modification or other work being performed by ETEL on behalf of the Buyer shall remain with the Buyer. The Buyer shall be responsible for effecting insurance which provides cover for the goods or equipment which are being repaired, including at ETEL's premises, or any third party premises, or in transit to and from those premises.
- 2.12 Part payment of any amount for the Goods does not convey any part right, title, and/or interest in the Goods.
- 2.13 Without prejudice to any other rights or remedies available to ETEL under these Terms or otherwise, if the Buyer does any of the following things:
 - (a) does not make a payment to ETEL when due under these Terms or does not otherwise comply with these Terms;
 - (b) commits an act of bankruptcy;
 - (c) makes an arrangement with all or any number of its creditors or if any creditor of the Buyer takes any steps to recover monies due by the Buyer or has grounds for taking any such steps;
 - (d) where the Buyer is a company, has a receiver appointed or goes into liquidation (voluntarily or otherwise); or
 - (e) if the Goods are "at risk" within the meaning of the PPSA,
 then ETEL shall be entitled to terminate any Contracts in place with the Buyer and, where relevant, enter any premises where Goods supplied by ETEL are situated, repossess and sell such Goods (subject to these Terms and in accordance with the PPSA).
- 2.14 The Buyer will indemnify ETEL and keep ETEL indemnified on demand in respect of any losses, liabilities, damages, claims, actions or costs or expenses (including legal costs and disbursements) incurred or suffered by ETEL:
 - (a) arising out of or in connection with the removal, repossession and sale of Goods pursuant to clause 2.13;
 - (b) arising out of or in connection with the Buyer's breach of these Terms or a Contract.

3 DEFAULT

- 3.1 If the Buyer defaults in performing any of its obligations under these Terms, then without prejudice to any other rights or remedies available to ETEL under these Terms or otherwise, ETEL may:
 - (a) require that all amounts invoiced to the Buyer under the relevant Contract or any other Contract then in force become immediately due and payable;
 - (b) suspend any further supply of Goods or Services to the Buyer until the default is remedied;
 - (c) terminate the relevant Contract or any other Contract then in force;
 - (d) revoke any credit accommodation provided to the Buyer and require that all further supplies of Goods or Services be on a cash on or before delivery basis; and
 - (e) recover all debt collection and legal expenses ETEL incurs in connection with the enforcement or attempted enforcement of these Terms.
- 3.2 Without affecting clause 3.1, if at any time ETEL reasonably considers the Buyer's credit to be unsatisfactory, ETEL may require payment for all further supplies of Goods under any Contract to be made in cash on or before delivery.

4 PRICES

- 4.1 All prices quoted are based on the current costs of raw materials purchased, processed materials and components and the rate of import duties, currency exchange rates, wages and other costs ("Costs")

General Terms and Conditions of Sale

- prevailing as at the date of quotation and are subject to change due to increases in the Costs unless otherwise stated in the relevant quote.
- 4.2 To accept a quote, the Buyer must do so in writing within the time set out in this clause. Quotations are valid for acceptance for 30 (thirty) days from quotation date (or such other period specified by ETEL in writing). ETEL may prior to the expiry of the acceptance period, agree in writing to extend the acceptance period for a further specified period. Without limiting or affecting clause 4.1, ETEL may alter or withdraw a quote at any time before it receives the Buyer's acceptance of that quote under this clause 4.2.
- 4.3 All prices (whether quoted or otherwise) are exclusive of GST and all other forms of taxation, withholding, duties, charges, dues, levies, rates, customs or excise duties ("**Taxes**") unless ETEL specifies otherwise in writing. The Buyer will pay any Taxes payable in respect of the Goods or Services supplied as specified in ETEL's tax invoice.
- 5 SPECIFICATIONS AND DRAWINGS**
- 5.1 The Buyer's Purchase Order shall be accompanied by sufficient information to enable ETEL to commence work and proceed without interruptions. The Buyer shall be responsible for, and warrant, the accuracy of the information it provides.
- 5.2 Any drawings or other information requiring the Buyer's approval shall be approved, amended or rejected and returned by the Buyer to ETEL within 14 days of receipt (or such other period as agreed). Any delay by the Buyer shall constitute grounds for extension of the Contract.
- 5.3 The Buyer shall be responsible for and bear the cost of any alteration to Goods supplied by ETEL arising from any discrepancy, error or omission in any drawing, specification or other information supplied or approved by the Buyer.
- 5.4 Unless otherwise agreed in writing, it shall be the Buyer's responsibility to obtain and provide any licences, access, approvals or permits as necessary for performance of any Contract.
- 6 FREIGHT AND PACKAGING FOR GOODS**
- 6.1 Delivery and dispatch dates for Goods are estimates only. ETEL will use reasonable endeavours to deliver the Goods at the time requested by the Buyer, or if no time is requested, within a reasonable time of the order being placed. ETEL will not in any circumstances be liable for late delivery and late delivery does not entitle the Buyer to cancel all or part of any order.
- 6.2 Unless otherwise agreed in writing by an authorised officer of ETEL, the Buyer will pay all packaging and freight charges associated with the Delivery of any Goods to the Buyer at the then current rates advised by ETEL.
- 7 ACCEPTANCE OF GOODS**
- 7.1 Any inspection and tests will be undertaken in accordance with ETEL's standard practice at the place of manufacture or elsewhere at ETEL's sole discretion. Only those inspections or tests set out in the Purchase Order are included within the quoted price.
- 7.2 The Goods will be deemed to have been accepted by the Buyer if no Defect is notified to ETEL in accordance with clause 7.3 within 10 Business Days following the date of Delivery.
- 7.3 If, upon inspection, the Buyer identifies a Defect, the Buyer must immediately notify ETEL in writing of the nature of the Defect, and the Buyer's sole remedy will be to require ETEL to repair or replace the Goods (or those components of the Goods that are the subject of the Defect) at ETEL's option but at no cost to the Buyer, within a reasonable period after the date on which the Buyer notified ETEL under this clause 7.3.
- 7.4 Except as provided otherwise in these Terms, Goods cannot be returned without ETEL's prior written consent and then subject to such terms as ETEL may impose.
- 8 WARRANTIES**
- 8.1 In respect of Services, ETEL warrants that the Services:
- will be performed using reasonable care and skill and in accordance with good industry practice;
 - will be performed by appropriately skilled and qualified personnel; and
 - will be provided in accordance with all applicable New Zealand laws.
- 8.2 In respect of Goods, ETEL warrants that any Goods provided will be free from faults in design, materials and/or workmanship for 12 months from the date of Delivery or such later date as specified by ETEL in the relevant quote ("**Warranty Period**") provided that the Goods have been operated within their design specification, have not been altered or damaged and (unless ETEL agrees otherwise in writing) are returned freight paid to ETEL's premises within the Warranty Period.
- 8.3 Except as stated in these Terms or as otherwise required by law ETEL:
- does not give any representation, guarantee or warranty in relation to the Goods or Services, including:
 - any warranties implied by Part 3 of the Contract and Commercial Law Act 2017;
 - any warranty that the Goods or Services will be fit for purposes for which Goods or Services of the same type as the Goods or Services are commonly supplied, or for the Buyer's specific purposes; and to the maximum extent permitted by law, all such representations, guarantees or warranties are excluded;
 - will not be liable in any way to the Buyer for any loss or damage sustained or incurred by the Buyer or any third party as a consequence of the Goods being defective;
 - will not be liable to the Buyer for any loss of profits, loss of revenue, loss of anticipated savings, loss of goodwill or reputation, or loss of commercial opportunity (in each case whether direct or indirect); and
 - will not be liable to the Buyer for any indirect or consequential losses of any nature.
- 8.4 Any liability ETEL has under a Contract shall be limited to the total amount paid under that Contract.
- 8.5 By submitting a Purchase Order, the Buyer confirms that it has satisfied itself that the Goods or Services will be fit for the purposes for which the Buyer requires the Goods or Services and is not relying on any statement or representation by or on behalf of ETEL in connection with its decision to order the Goods or Services.
- 8.6 Nothing in these Terms or any Contract will in any way exclude or attempt to exclude a party's liability to the other for:
- fraud or fraudulent misrepresentation; and/or
 - any other matter for which it would be illegal to exclude or attempt to exclude a party's liability.
- 8.7 Following acceptance of the Goods, and following the rectification of any Defects as contemplated by clause 7.3, the Buyer's sole remedy in respect of a breach of the warranties given by ETEL in clause 7.3 will be limited to, at ETEL's option:
- correcting defects in the Goods by repair or replacement;
 - bringing the Goods into conformity with any previously agreed specification; or
- 8.8 damages in an amount not exceeding the contract price for the relevant Goods. The warranty in clause 8.3 shall apply only to Goods manufactured by ETEL. Any parts or components obtained by ETEL from other sources and used in the manufacture of the Goods are not covered by the warranty. ETEL will extend to the Buyer the benefit of any warranty covering such parts or components which is given to ETEL by the original manufacturer.
- 8.9 No agent or representative of ETEL is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these Terms ("**Statements**") and ETEL is not in any way bound by any such Statements.
- 9 CONFIDENTIALITY**
- 9.1 Each party must keep all Confidential Information disclosed to it by the other party strictly confidential not disclose such Confidential Information except to its Personnel and professional advisors on a "need to know" basis.
- 9.2 The obligations under clause 9.1 do not apply:
- to information that:
 - is or becomes public knowledge other than by breach of the confidentiality obligations; or
 - is independently developed without access to any Confidential Information of the disclosing party.
 - to the extent that disclosure is required by law or the rules of any stock exchange, provided that to the extent lawful and reasonably practicable to do so the receiving party notifies the disclosing party of the required disclosure and gives the disclosing party a reasonable opportunity to take any available steps to challenge the proposed disclosure.

General Terms and Conditions of Sale

- 9.3 On termination of a Contract each party shall, as soon as reasonably possible, return to the disclosing party or (at the option of the disclosing party) destroy all Confidential Information of the other party still in its possession, except for information which the disclosing party agrees in writing can be retained or is retained for archival purposes.
- 10 INTELLECTUAL PROPERTY**
- 10.1 All Intellectual Property owned by a party prior to entering into a Contract or developed by or on behalf of them other than in connection with a Contract (including any modification, enhancement or derivative work of that Intellectual Property) remains the Intellectual Property of that party regardless of its use in the Services (**Pre-existing IP**).
- 10.2 The ownership of any Intellectual Property created by ETEL in the course of providing the Services will vest absolutely and exclusively in ETEL upon its creation.
- 10.3 To the extent that any Services provided contain Intellectual Property of ETEL, ETEL grants the Buyer a non-exclusive, royalty free, non-transferable licence to use that Pre-existing IP, solely for the Buyer to receive the benefit of the Services.
- 10.4 The Buyer grants to ETEL a non-exclusive, royalty free, non-transferable licence to use, copy, modify and create derivative works from any Pre-existing IP of the Buyer solely to provide the Services to the Customer.
- 11 DISPUTE RESOLUTION**
- 11.1 If any dispute arises out of, or in connection with, these Terms either party may refer the dispute to the dispute resolution process described in this clause by notice to the other (**Dispute Notice**).
- 11.2 The parties' representatives will meet within 5 Business Days of the receipt of the Dispute Notice and attempt in good faith to resolve the dispute.
- 11.3 If the nominated representatives are unable to resolve the dispute within 20 Business Days of the Dispute Notice, either party may refer the dispute to mediation by a mediator agreed upon between them, or failing agreement, a mediator appointed by the chairperson for the time being of the Resolution Institute NZ.
- 11.4 If the dispute is not resolved within 20 Business Days of its reference to mediation then any party to the dispute may refer the dispute to arbitration under the Arbitration Act 1996. The decision of the arbitrator shall be final and binding on the parties to the dispute.
- 11.5 Nothing in this clause prevents a party from seeking an interim injunction at any time where it deems appropriate.
- 12 FORCE MAJEURE**
- 12.1 ETEL will not be liable for any breach of these Terms or failure to supply Goods or Services where such breach or failure is caused by an event beyond ETEL's reasonable control ("**Force Majeure Event**") and which will include, without limitation, any act or omission of ETEL's subcontractors or suppliers, or any impact of the Covid-19 pandemic, which is beyond ETEL's reasonable control.
- 12.2 If a Force Majeure Event occurs, ETEL may suspend Delivery or extend the Delivery time of the Goods or Services affected, by a period equal to the duration of the Force Majeure Event.
- 13 CANCELLATION BY BUYER**
- Except with the prior written consent of ETEL and then subject to any terms ETEL may impose, no Contract may be cancelled by the Buyer.
- 14 CONSUMER GUARANTEES ACT 1993 AND FAIR TRADING ACT 1986**
- 14.1 The Buyer acknowledges that it is acquiring Goods or Services from ETEL in trade for the purposes of a business and that accordingly:
- the Consumer Guarantees Act 1993 will not apply to supply of the Goods or Services; and
 - sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986 will not apply to the offer of, or offer to supply, the Goods or Services or otherwise in connection with the relationship between the parties, and the parties agree that it is fair and reasonable that they are both bound by this clause 14.1.
- 14.2 Without limiting clause 14.1 the Buyer acknowledges that:
- the Buyer was offered an opportunity to negotiate the terms of these Terms;
 - the Buyer was offered the opportunity to obtain independent legal advice and has done so (or has waived its rights to do so).
- 15 PERSONAL PROPERTY SECURITIES ACT 1999**
- 15.1 By entering a Contract, the Buyer grants ETEL a Security Interest in:
- the Goods supplied by ETEL pursuant to that Contract; and
 - all proceeds in those Goods.
- 15.2 The Buyer acknowledges and agrees that:
- it waives its right to receive a copy of any verification statement(s) or any financing statement(s) under the PPSA;
 - it will have none of the rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 127, 129, 131, 132, 133, and 134 of the PPSA;
 - all notices to be given pursuant to these Terms will be given in accordance with sections 185 to 189 of the PPSA;
 - where ETEL has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA;
 - it has received value as at the date of the first Delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted to ETEL under these Terms;
 - it has provided the Buyer's full and correct legal name to ETEL and will immediately notify ETEL of any change in the Buyer's name;
 - it will irrevocably consent to ETEL, and ETEL's employees, contractors, or subcontractors, without notice and without in any way being liable to any person entering any premises where ETEL reasonably believes that Goods supplied to the Buyer are situated for the purposes of inspecting, stock-taking or, in the event that any amount owing to ETEL becomes due and payable, reclaiming any Goods in the Buyer's possession or control (including any Goods that have become an accession under the PPSA) and to dispose of them or retain them for ETEL's benefit;
 - it will reimburse ETEL for any cost ETEL incurs in registering, maintaining, discharging and/or enforcing the Security Interest created by these Terms;
 - it will execute all such further documents and do all such further acts and things:
 - as ETEL may reasonably require for the purpose of registering a financing statement or financing change statement on the Personal Property Securities Register;
 - otherwise deemed necessary or desirable by ETEL to ensure that ETEL has a perfected and first ranking Security Interest in the Goods.
- 15.3 Until title to the Goods passes to the Buyer in accordance with clause 2.8, ETEL will have a Security Interest in the Goods and all proceeds of the Goods as contemplated by clause 15.1 and the Buyer must:
- store the Goods separately from all other goods of the Buyer or any third party;
 - not remove any serial number or other identification number from the Goods that identifies the Goods as ETEL's property;
 - maintain the Goods in good working condition and repair;
 - keep full and complete records of the Goods;
 - return the Goods if requested to do so by ETEL following non-payment of any amount due to ETEL, or non-fulfilment of any other obligation of the Buyer, under these Terms, the relevant Contract, or any other agreement, without prejudice to ETEL's right and remedies;
 - keep the Goods free and clear of all liens, claims, taxes, duties, charges, pledges, encumbrances, or adverse claims of any nature;
 - not register or allow any person to register a financing change statement or a change demand in respect of the Goods without ETEL's prior written consent.
- 16 NOTICES**
- 16.1 If ETEL is required to or may give notice to the Buyer under these Terms, it may send that notice to an address the Buyer provides in the Purchase Order (including the Buyer's email address) or any other address that the Buyer provide to ETEL from time to time.
- 16.2 If the Buyer is required to or may give notice to ETEL, it must send that notice:
- By post to : ETEL Services Limited
PO Box 15 121, New Lynn
Auckland 0640, New Zealand
- By email to : accounts.receivable@eteltransformers.co.nz

General Terms and Conditions of Sale

- 16.3 For the purposes of these Terms, notices given by ETEL in accordance with clause 16.1 or by the Buyer in accordance with clause 16.2 will be deemed to have been received:
- (a) if sent by post, on the second Business Day after the date posted;
 - (b) if sent by email or fax, at the time of transmission by the sender unless the sender was put on notice that the transmission was not successful, but if the time and day on which a notice would be deemed to have been received in accordance with the above is not between 9.00am and 5.00pm on a Business Day, the notice will be deemed to have been received at 9.00am on the next Business Day.

- (b) references to statutory provisions are to be construed as references to those provisions as they may be amended or re-enacted from time to time;
- (c) references to clauses are references to clauses of these Terms;
- (d) words importing the plural include the singular and vice-versa.

The word 'includes' is not a form of limitation.

17 GENERAL

- 17.1 Nothing in these Terms is intended to create an obligation or a right enforceable by a person other than the Buyer for the purposes of Part 2 of the Contract and Commercial Law Act 2017.
- 17.2 These Terms and any dispute arising out of or in connection with these Terms, a Contract, or the Goods or Services will be governed by the laws of New Zealand and the New Zealand courts will have the non-exclusive jurisdiction to settle any dispute arising out of or in connection with these Terms, the Goods or Services, or a Contract.
- 17.3 The Buyer may not assign any of its rights or benefits under these Terms, in respect of the Goods or Services, or under a Contract without ETEL's prior written consent.
- 17.4 For the purposes of Part 3 of the Contract and Commercial Law Act 2017, the United Nations Convention on Contracts for the International Sale of Goods or Services does not apply to Goods or Services supplied by ETEL pursuant to these Terms.
- 17.5 These Terms:
- (a) contain the entire agreement between the parties with respect to the subject matter of these Terms;
 - (b) set out the only conduct relied on by the parties; and
 - (c) supersede all earlier conduct and prior agreements, representations, and understandings between the parties in connection with the subject matter of these Terms.

18 INTERPRETATION

- 18.1 In these Terms, unless the context otherwise requires:
- 18.2 "Business Day" means a day, other than a Saturday or a Sunday, on which registered banks are generally open for over the counter business in Auckland, New Zealand;
- "Buyer" has the meaning given to it in clause 1.1;
- "Contract" has the meaning given to it in clause **Error! Reference source not found.**;
- "Confidential Information" means information of a party relating to the subject matter of a Contract which is by its nature confidential, or is designated as confidential by either party, and includes the terms of a Contract.
- "Defect" means any failure of the Goods (or a component of them) to meet the warranties given by ETEL under clause 8;
- "ETEL" means ETEL Services Limited, its successors and assigns;
- "Goods" means all products, parts and materials to be provided by ETEL as set out in a Purchase Order;
- "GST" means Goods and Services Tax payable under the Services and Services Tax Act 1985.
- "Intellectual Property" means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, know-how, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other intellectual property rights which are recognised or protected under law;
- "PPSA" means the Personal Property Securities Act 1999 and where the context requires includes any regulations made under that Act;
- "Purchase Order" means an order for Goods or Services submitted by the Buyer to ETEL from time to time;
- "Security Interest" has the same meaning given that meaning under the PPSA; and
- "Services" means any repair, maintenance or other services to be provided by ETEL as set out in a Purchase Order.
- 18.3 In interpreting these Terms, the following rules must be applied unless the context otherwise requires:
- (a) headings to clauses are for reference only and are not an aid to interpretations;