



# EAGLE LIGHTING

**Fagerhult (NZ) Limited**  
**(Trading as Eagle Lighting)**  
**NZBN 9429031263351**

**Head Office**

Ground Floor, 82 Wyndham Street  
Auckland Central 1010

Tel: 0800 324 374

Web: [www.eaglelighting.com.au](http://www.eaglelighting.com.au)

## PART 5 – TERMS OF TRADE

### Application of Terms

1. These Terms set out the contractual basis upon which we agree to supply you with Goods and Services and apply to each and every Contract between us and you for the supply of Goods and Services.
2. Any terms or conditions included in, attached to, or referenced in your Order, or any other document provided by you deviating from, or inconsistent with, these Terms, are expressly rejected by us and will not vary or supplement these Terms.
3. Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
4. Where we have granted you a credit facility, our Credit Facility Terms apply. In the event of any conflict, ambiguity, or inconsistency between these Terms and our Credit Facility Terms, our Credit Facility Terms prevail to the extent of the conflict, ambiguity, or inconsistency.

### Quotations

5. Quotations made by us:
  - (a) are prepared using the details, drawings, and specifications provided by you; and
  - (b) are estimates only and will not be construed as an offer or obligation to supply any Goods or perform any Services.
6. Unless specified otherwise, quotations made by us:
  - (a) are inclusive of the costs of delivery (where the Goods are delivered in a single delivery to a metropolitan area pursuant to clause 35);
  - (b) are exclusive of GST;
  - (c) are subject to rise and fall;
  - (d) do not include the supply of lamps or tubes;
  - (e) are exclusive of the costs of installation, supervision of installation, and commissioning; and
  - (f) will remain valid for a period of thirty (30) days from the date of quotation.
7. Without derogating from clause 6, quotations made by us are based upon the quantities shown for each of the Goods. Should a variation in quantity exceed 10% of any particular Good, we reserve the right to issue a fresh quotation.
8. You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
9. Unless specified otherwise, insofar as quotations made by us relate to the performance of Services, the Price will be based upon Services being performed during Normal Working Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Normal Working Hours or Business Days, in which case such Services will be deemed a variation and additional charges will apply.
10. We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 14.

### Samples

11. Unless otherwise agreed in writing, samples provided by us must be returned to us within ninety (90) days of receipt and we shall be entitled to charge you for the cost of the samples if they are not returned to us within this timeframe.

### Formation of Contract

12. You may accept these Terms (and you will be deemed to accept these Terms) if you, following receipt of a copy of these Terms:
  - (a) confirm your acceptance of these Terms; or
  - (b) place an Order with us.
13. We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to supply you with any Goods or perform any Services at any time.
14. Any Order placed by you will be construed as an offer. A binding Contract will only come into existence, if:
  - (a) we communicate our acceptance of your Order, whether in writing or by electronic means; or
  - (b) we supply you with any Goods or perform any Services following receipt of your Order.
15. For clarity, a Contract is formed at the location of ours where your Order is placed.

### Price and Payment terms

16. Subject to clause 17, the Price payable for the Goods or Services will be in accordance with our then prevailing price list/rates (as notified by us to you from time to time), as applicable as at the date of your Order.
17. Where we have issued you a quotation, the Price will be our quoted price (subject to clauses 6 and 29 to 32) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
18. Subject to clause 19, the terms of payment are strictly cash before delivery or on a performance basis.
19. Where we have granted you a credit facility, the terms of payment are strictly thirty (30) days from the end of month of invoice (or such other period as nominated by us in writing).
20. We may, without prejudice to any other rights which may be conferred upon us by law or equity, suspend your credit facility by notifying you in writing if you fail to make payment of any monies due to us by the due date for payment or for any other reason in our sole discretion.
21. Payment must be made by Electronic Funds Transfer (EFT) or by using your credit facility with us (where applicable). We reserve the right to change the payment methods that we accept at any time.
22. We reserve the right to require payment of a non-refundable deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 14, unless otherwise agreed in writing. For clarity:
  - (a) where we require payment of a deposit, we are under no obligation to procure or supply Goods or Services until the deposit has been received by us in cleared funds; and
  - (b) the deposit will be non-refundable, except in circumstances where:
    - (i) you are entitled to a refund under New Zealand Law; or
    - (ii) where you terminate a Contract as a result of our breach.
23. If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "GST Amount") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates.

24. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
25. You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by us.
26. Any sums owed to us by you will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever (including by way of retention monies).
27. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

### Default

28. If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice, we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
  - (a) charge you interest on the outstanding amount at the rate of 15% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
  - (b) require you to pay, in advance, for any Goods or Services (or any part of the Goods or Services) which have not yet been supplied; and
  - (c) suspend or cease the supply of any further Goods or Services to you.

### Variations

29. If you request or direct that any Goods or Services be supplied that are not strictly in accordance with our quotation or your Order, then such Goods or Services will constitute a variation.
30. A notice of variation must be submitted by you in writing and is only effective if accepted by us in writing.
31. You understand and agree that:
  - (a) all variations must be agreed in writing prior to the Goods or Services that are the subject of the variation being supplied;
  - (b) all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our then prevailing price list/rates; and
32. Notwithstanding clauses 29 to 31, and subject to any rights you might have under the *Consumer Guarantees Act 1993* or any other legislation, we reserve the right to vary the quoted Price, if:
  - (a) there is a change in our costs of labour (including related overhead expenses), equipment, the Goods, or other costs following your acceptance of our quotation;
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable issues (including, without limitation, issues, faults, or problems identified upon further inspection) which have been discovered following the commencement of the Services;
  - (c) the Goods or Services specified in your Order are varied from the Goods or Services specified in our quotation; or
  - (d) otherwise as provided for in these Terms.

### Order cancellations

33. You may not cancel an Order (or any part of an Order) once a Contract has been formed, delivery of the Goods cannot be deferred, and Goods ordered cannot be returned, except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all losses we have incurred or may incur as a result of the cancellation, deferral, or return, including third-party supplier restocking fees, cartage, bank charges, other incidental expenses incurred on any part of your Order, and loss of profits.
34. You acknowledge and agree that cancelled Orders (if accepted by us) may be subject to a minimum restocking charge of 20% of the Price.

### Delivery

35. We shall bear all costs of delivering the Goods where your place of business is situated within a metropolitan area (as determined by us in our sole discretion).
36. Where delivery is to be made to a non-metropolitan area (as determined by us in our sole discretion), you will be liable for all costs associated with packaging and delivery, including cartage/freight, handling, and other charges.
37. Where you request or direct that the Goods be delivered in multiple instalments or progressive deliveries, we reserve the right to charge you additional costs for each delivery.
38. You must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
39. You acknowledge and accept that any period or date for delivery stated by us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage suffered by you or any third party for failure to meet any estimated delivery date.
40. Delivery will be made within Normal Working Hours on Business Days, unless otherwise agreed in writing.
41. Delivery is deemed to occur at the time:
  - (a) you, or any third party on your behalf, collects the Goods from us;
  - (b) the Goods are delivered to the delivery location specified in your Order (or to such other location as otherwise agreed in writing);
  - (c) your nominated carrier takes possession of the Goods, in which event the carrier will be deemed to be your agent.
42. If requested by us, you or your duly authorised representative must sign our delivery docket as confirmation that the Goods ordered by you have been received by you in apparent good order and condition.
43. If delivery of the Goods is deferred:
  - (a) at your request; or
  - (b) due to you being unable to accept delivery of the Goods (for whatever reason), when:
    - (c) (where no date for delivery has been specified by you) we are ready to deliver the Goods;
    - (d) (where a delivery date has been specified by you) the Goods are due to be delivered, then we will be entitled to charge you, and you must pay to us;
    - (e) reasonable storage charges (which will accrue on a daily basis until such time as the Goods are delivered); and
    - (f) a charge to re-deliver the Goods (where delivery has previously been attempted).
44. You acknowledge and accept that:
  - (a) we may deliver Goods by instalments and reserve the right to require payment for each separate instalment in accordance with these Terms;

- (b) we are entitled to issue you with an invoice at any time if delivery of the Goods is deferred pursuant to clause 43;
- (c) you are not relieved from any obligation arising under these Terms, or any Contract of which they form part, by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract;
- (d) we do not deliver upstairs and will only deliver Goods to the ground floor;
- (e) where a hoist or other equipment is required for delivering the Goods, you must supply said hoist or equipment along with a suitably qualified operator;
- (f) delivery costs are quoted based on clear site access of truck sizes no smaller than 4.4 metres in height and 8 metres in length; and
- (g) additional delivery charges may apply based on your delivery or site requirements. You must notify us in writing no less than four (4) weeks prior to the first delivery if any site requirements apply. Site specific requirements include things such as:
  - (i) restrictions in height and length of the truck;
  - (ii) tailgate requirements; and
  - (iii) specific loading dock heights and time specific delivery windows narrower than one day.
 You must complete the Eagle Lighting Special Delivery Form detailing all delivery requirements.

**Risk**

- 45. Risk of loss or damage to the Goods passes to you upon delivery to you or to your agent or to a carrier commissioned by you in accordance with clause 41.
- 46. You must insure the Goods for their full replacement value on or before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such other insurable causes as may be available and must include us as co-insured.
- 47. If you request that Goods are to be delivered either to an unattended location, left outside your premises, or left outside our premises for collection, you acknowledge that we may deliver the Goods as requested at your sole risk.

**Retention of title**

- 48. Until such time as you have made payment in full for any Goods supplied by us, and until such time as you have made payment in full of all other money owed to us by you (whether in respect of money payable under a specific Contract or on any other account whatsoever):
  - (a) title in the Goods does not pass to you;
  - (b) you agree that property and title in the Goods will not pass to you and we retain the legal and equitable title in those Goods supplied and not yet sold;
  - (c) you will hold the Goods in a fiduciary capacity for us and agree to store the Goods in such a manner that they can be identified as our property, and will not mix the Goods with other similar goods; and
  - (d) you will be entitled to sell the Goods in the ordinary course of your business but will sell as agent and bailee for us and the proceeds of sale of the Goods will be held by you on trust for us absolutely.
- 49. Your liability to us will not be discharged by the operation of clause 48(d) (but your levels of indebtedness will be reduced by the extent of the funds so remitted to us).
- 50. You agree that whilst property and title in the Goods remains with us, we have the right, with prior notice to you, to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect our Goods and, when payment is overdue, to immediately enter the premises (as your invitee) to repossess the Goods which may be in your possession, custody, or control when payment is overdue.
- 51. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 50 where you are otherwise in default of these Terms. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
- 52. You agree that where the Goods have been retaken into our possession, we have the absolute right to sell or deal with the Goods, and if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell such Goods.
- 53. For the avoidance of doubt, our interest constitutes a 'purchase money security interest' pursuant to the PPSA.

**Personal Property Securities Law**

- 54. You acknowledge that by assenting to these Terms, which constitutes a security agreement for the purposes of the PPSA, you grant us a security interest in all Goods (and their proceeds) now or in the future supplied by us to you (or to your account).
- 55. You undertake to do anything that is required by us:
  - (a) so that we can acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods (and their proceeds);
  - (b) to register a financing statement or financing change statement; and
  - (c) to ensure that our security position, and rights and obligations, are not adversely affected by the PPSA.
- 56. Unless you have obtained our prior written consent, you undertake not to:
  - (a) register a financing change statement in respect of a security interest contemplated or constituted by these Terms; and
  - (b) create, or purport to create, any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
- 57. You agree, to the extent permitted by law, that you shall have no rights under the following provisions of Part 9 of the PPSA to:
  - (a) receive a notice under section 114(1)(a);
  - (b) receive a statement of account under section 116;
  - (c) surplus distributed under section 117;
  - (d) recover any surplus under section 119;
  - (e) receive notice of any proposal of Eagle Lighting to retain collateral under section 120(2);
  - (f) object to any proposal of Eagle Lighting to retain collateral under section 121;
  - (g) not have any goods damaged in the event that we were to remove an accession under section 125;
  - (h) receive notice of the removal of an accession under section 129;
  - (i) apply to the Court for an order concerning the removal of an accession under section 131;
  - (j) redeem collateral under section 132; and
  - (k) reinstate the contract under section 133.
- 58. You agree that you will, if requested by us, sign any documents, provide any information, or do anything else we request, to ensure that any security interest created in our favour by these Terms is, to the fullest extent possible under the PPSA, perfected in accordance with of the PPSA.
- 59. You further agree that where Eagle Lighting has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- 60. You irrevocably grant to us the right to enter upon your property or premises, with notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under the PPSA, and you will be liable for and indemnify us from and against any claims made by any third party as a result of such exercise.
- 61. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 60 where you are otherwise in default of any Contract of which these Terms form part. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
- 62. You agree to accept service of any document required to be served, including any notice under these Terms or the PPSA or any originating process, by prepaid post at any address nominated by you or any other address later notified to us by you or your authorised representative.
- 63. You further agree that where we have rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

**Claims and returns**

- 64. You must, within forty-eight (48) hours of the date of delivery:
  - (a) give us written notice, with particulars, of any claim that the Goods delivered are not in accordance with your Order (including any claim for shortfall, incorrect supply, or damage to the Goods); and
  - (b) provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
- 65. If you fail to provide us with such notice pursuant to clause 64, then to the extent permitted by law, the Goods must be treated as having been accepted by you.
- 66. Unless otherwise agreed in writing, you must pay all costs associated with the return of any Goods (either to us or from us to you or any third party) including freight, insurance, handling, and other charges.
- 67. Goods cannot be returned to us without our prior written consent. To the maximum extent permitted by law, Goods that have been specifically produced, modified, or procured at your request cannot be returned in any circumstances.
- 68. Any return (except for Goods deemed by us to be incorrectly supplied or deemed by us to be defective) will incur a handling and administration charge of 20% of the purchase Price of the returned Goods, unless otherwise agreed in writing.
- 69. Goods to be returned to us must be unsoiled, undamaged, packed and wrapped appropriately, and must include all original packaging and documentation.
- 70. We accept no liability for any damage that occurs to any Goods in return transit.

**Intellectual property**

- 71. All right, title and interest in the Intellectual Property Rights in and to all Works, and all Goods sold or supplied by us are, and will at all times, remain our property.
- 72. All improvements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 71 (the "Improvements") vest in us immediately on creation. To the extent necessary to give effect to this clause 72, you assign to us all right, title, and interest in the Improvements.
- 73. You acknowledge and agree that you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing.
- 74. You warrant and represent that all information, documents, items, and materials provided to us by you (or on your behalf) will not infringe the Intellectual Property Rights of any third-party.

**Confidentiality**

- 75. You must not, directly or indirectly, disclose to any other person, or exploit, any Confidential Information without our prior written and fully informed consent, except to the extent that:
  - (a) disclosure is permitted by these Terms or any Contract of which they form part;
  - (b) the information is available to the public generally (except as a result of a previous breach of these clause);
  - (c) you are required to make disclosure by operation of law; or
  - (d) the disclosure is made on a confidential basis to your representatives or professional advisers for the purpose of obtaining professional advice.

**Indemnity**

- 76. You are liable for and indemnify us in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, as a result of:
  - (a) any default by you in the performance or observance of your obligations under any Contract of which these Terms form part; and
  - (b) any infringement (or alleged infringement) of the Intellectual Property Rights of any third-party.
- 77. Your liability to indemnify us will be reduced proportionally only to the extent that:
  - (a) any negligent act or omission by us or a breach of our obligations under any Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or
  - (b) these Terms make us specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of, or damage to the Goods.
- 78. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the performance or termination of any Contract of which these Terms form part.
- 79. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.

**Nature of relationship**

- 80. We will perform our obligations under the Contract as an independent contractor. Nothing in these Terms, or any Contract of which they form part, is to be construed as creating a relationship of agency, joint venture, or partnership.

**Limitation of liability**

- 81. We will not be liable for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time.
- 82. Subject to clauses 81, 83, 84, and 86, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
- 83. The limitation contemplated in clause 82 is an aggregate limit for all claims, whenever made.
- 84. Subject to clause 86, we are not liable for any Excluded Loss, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part.
- 85. For clarity, and without limiting clauses 81 to 84, the Parties agree that clauses 81 to 84 are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
- 86. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Sale of Goods Act 1908, the Contract and Commercial Law Act 2017 and other statutes may imply warranties or conditions or impose obligations upon Eagle Lighting which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on us, Eagle Lighting's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute. Liability for such failure is limited to, in the case of a supply of Goods, us replacing the Goods or supplying equivalent Goods, or in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

**Termination of Contract**

- 87. We may, with immediate effect, terminate any Contract of which these Terms form part by written notice to you, if:
  - (a) you fail to make payment of a deposit required by us or any amount owed to us as and when due;
  - (b) you commit a material or persistent breach of these Terms and do not remedy the breach within fourteen (14) days of receipt of a notice identifying the breach and requiring its remedy; or
  - (c) we are no longer able to, for whatever reason, supply the Goods or Services (or any part of the Goods or Services).
- 88. For clarity, termination of any Contract of which these Terms form part will not affect the rights which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.

**Costs**

- 89. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

**Force majeure**

- 90. We are not liable to you for any delay or failure to perform any obligation under any Contract of which these Terms form part if such delay or failure to perform is due to a Force Majeure Event.

**Variation**

- 91. No variation of these Terms, or any Contract of which these Terms form part, requested by you will be effective, unless varied in writing and agreed between the Parties. Clerical errors (such

as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.

92. We may amend these Terms by notifying you in writing. The amended Terms will apply to any Order placed by you following us notifying you of the amendments.

#### Subcontracting

93. You acknowledge that we reserve the right to subcontract:

- the manufacturing and supply of any part of the Goods to be supplied; and
- the Services to be performed (or any part of those Services), however, any subcontracting of the Goods or Services to be supplied will not relieve us of any of our obligations to you under any Contract of which these Terms form part.

#### Assignment

94. Neither Party may assign, transfer, or novate its rights or obligations under any Contract of which these Terms form part without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

#### Waiver

95. A waiver of any provision or breach of these Terms, or any Contract of which these Terms form part, will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

#### Severance

96. If any part of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

#### Entire agreement

97. The descriptions, illustrations, specifications, and data contained in catalogues, price lists, other written materials supplied by us are by way of general description and do not form part of these Terms or of the description to be applied to the Goods.

98. Subject to clause 4, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

99. No agent or representative of ours is authorised to make any representations, warranties, or agreements not expressly contained in these Terms, and we are not in any way bound by such representations, warranties, or agreements.

#### Governing law

100. These Terms, and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of New Zealand.

#### Definitions

101. In these Terms:

**"Business Day"** means a day that is not a Saturday, Sunday, or public holiday in Auckland, New Zealand.

**"Confidential Information"** means information that:

- is by its nature confidential;
- is designated by us to be confidential; or
- you know or ought to know is confidential, relating to the Goods or our business which is not in the public domain, including drawings, technical specifications, trade secrets, know-how, scientific, technical, product, market, or pricing information.

**"Contract"** means a contract for the supply of Goods or Services, as constituted by our quotation (if any), your Order, and these Terms.

**"Credit Facility Terms"** means our credit facility terms, as set out in the credit agreement executed by you (where applicable).

**"Customer," "you," "your"** means the corporation, partnership, person, or other entity acquiring Goods or Services from us.

**"Eagle Lighting," "we," "us," "our"** means Fagerhult (NZ) Limited (Trading as Eagle Lighting) NZBN 9429031263351

**"Excluded Loss"** means any:

- consequential loss;
- loss of revenues;
- loss of reputation;
- loss of profits;
- loss of bargain;
- indirect loss;
- lost opportunities, including opportunities to enter into arrangements with third parties;
- loss or damage in connection with claims against you by third parties; or
- loss or corruption of data.

**"Force Majeure Event"** means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond our reasonable control.

**"Goods"** means all goods supplied by us to you (and where the context so permits includes any performance of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

**"GST"** means goods and services tax at the rate prevailing from time to time pursuant to the GST Act.

**"GST Act"** means the *Goods and Services Tax Act 1985*.

**"Intellectual Property Rights"** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, circuit layouts, patents and patentable inventions, including the right to apply for registration of any such rights.

**"Normal Working Hours"** means 08:00am to 5:00pm.

**"Order"** means a written or oral order placed by you offering to acquire Goods or Services from us.

**"Parties"** means Eagle Lighting and the Customer, and **"Party"** means either one of them.

**"Price"** means the price payable for the Goods or the Services, as notified by us to you from time to time.

**"Services"** means all services performed by us (and where the context so permits includes any supply of Goods).

**"Tax Invoice"** and **"Taxable Supply"** have the same meaning as in the GST Act.

**"Terms"** means these terms of trade.

**"Works"** means all literary, artistic, and other works, including all physical works, production materials and subject matter created solely or jointly with others, by us in the course of or in relation to any Contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such works or subject matter (whether currently existing or created in the future).

#### Interpretation

102. If there is any conflict, ambiguity, or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (in descending order of precedence):

- any additional terms or conditions contained in our quotation (where applicable);
- our Credit Facility Terms (where applicable);
- these Terms; and
- any other documents issued by us.

103. Unless the contrary intention appears, a reference to:

- these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
- a reference to a clause is a reference to a clause contained in these Terms;
- the singular includes the plural and vice versa;
- a right includes a benefit, remedy, authority, discretion, or power;
- person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
- a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
- any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.

104. Headings are for convenience only and will not affect the interpretation of these Terms.

105. The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions.

106. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

107. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

108. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

109. Unless specified otherwise, all reference to sums of money is in terms of New Zealand currency (NZD), and all documents and correspondence between the Parties will be in the English language.