

Standard Terms of Sale

- 1 Supply of Goods and/or Services**
- 1.1 JCNZ shall provide Goods and/or Services in accordance with the provisions of these terms of sale.
- 2 Price List**
- 2.1 Unless given a quotation as below, the Buyer's price is the list price in effect at the time of the purchase, less the applicable discount. Discounts to list prices will be extended only to authorised Buyers.
- 2.2 Prices are ex-works unless otherwise specifically stated.
- 2.3 Prices are in New Zealand Dollars unless otherwise specifically stated.
- 2.4 Price lists provide no obligation on JCNZ to abide by those prices.
- 2.5 Price lists are subject to change without notice.
- 2.6 It is the Buyers obligation to confirm with JCNZ the applicable price at the time of purchase.
- 2.7 Fees and charges may be adjusted by JCNZ from time to time as follows:
- 2.7.1 For each invoice with net billing below \$200.00 a service charge of \$30.00 is applied;
- 2.7.2 For each priority AM Next Day delivery bag a fee of \$20.00 is applied;
- 2.7.3 For each Guaranteed Emergency Delivery a service charge of freight cost plus \$75.00 is applied; and
- 2.7.4 For a Buyer error or excess return request authorization a Restocking Fee of 15% of net billing is applied.
- 2.8 Fees and charges are not considered when calculating net billing.
- 3 Quotation**
- 3.1 Any quotation given by JCNZ to the Buyer;
- 3.1.1 shall not constitute an offer;
- 3.1.2 is valid for a period of 30 days from date of issue unless otherwise specifically stated; and
- 3.1.3 does not include an amount on account of GST, unless otherwise specifically stated.
- 3.2 Verbal quotations will not be recognised by JCNZ.
- 3.3 Prices given in any quotation are applicable to that quotation only and will not apply in any other instance.
- 3.4 Prices of imported Goods are based upon rates of exchange existing at the date of the quotation unless otherwise specifically stated.
- 3.5 Prices are based upon Goods and/or Services to be supplied during regular working days and hours and labour rates do not include any site allowances, special conditions; or after hours or weekend labour, unless otherwise specifically stated.
- 3.6 JCNZ reserves the right to cancel all trade discounts, special prices, or rebates in the event that the Buyer fails to comply with these terms and conditions of sale as to payment.
- 3.7 The Buyer agrees to pay JCNZ the price specified in the quotation.
- 4 Price variation**
- 4.1 Unless otherwise specifically stated, the price of the Goods will be subject to cost adjustment based on the percentage increase from the date of the quotation to the date of delivery of imported Goods rates of exchange, import duty, freight, insurance, primage or cartage.
- 4.2 Unless otherwise specifically stated, the price of Services will be subject to cost adjustment based on the percentage increase from the date of the quotation to the date of delivery in the New Zealand Consumer Price Index.
- 5 Goods and Services Tax**
- 5.1 If any supply made is subject to GST, the Buyer must pay to JCNZ an additional amount equal to the GST payable.
- 5.2 The Buyer must pay the GST amount at the same time as the Buyer must pay the price, or if partial payment invoices are issued, at the same time as the Buyer must make the partial payment.
- 6 Delivery date**
- 6.1 Any quoted delivery dates are estimates only. JCNZ is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.
- 6.2 JCNZ shall be under no liability for direct or consequential loss or damage to the Buyer arising from delay or postponement in delivery.
- 7 Order**
- 7.1 A written order is to be submitted by the Buyer to JCNZ quoting at least; an order number, full description of the Goods and/or Services to be purchased, the requested delivery time and address and reference to JCNZ's quotation (where applicable).
- 7.2 Orders referencing a price list are accepted by JCNZ on the condition that they will be invoiced at the prices applicable at the date of despatch.
- 8 Order Acceptance**
- 8.1 Any order from the Buyer to JCNZ for the supply of Goods and/or Services shall not be binding upon JCNZ until either accepted or fulfilled by JCNZ.
- 8.2 These terms of sale apply to the Buyer and to JCNZ in respect of Goods and/or Services ordered by the Buyer and any terms of sale set out in the Buyer's order deviating from or inconsistent with these terms of sale will not bind JCNZ despite any statement by the Buyer in its order that its terms and conditions shall prevail over these terms of sale.
- 8.3 JCNZ may at its discretion, as a condition of acceptance of such order for Goods and/or Services require the Buyer to:
- 8.3.1 provide a personal guarantee as to payment;
- 8.3.2 provide a bank guarantee; and/or
- 8.3.3 enter into an assignment of progress payments due to the Buyer.
- 8.4 JCNZ may require full or partial payment or payment guarantee in advance of shipment if it is necessary in JCNZ's reasonable opinion.
- 9 Order Cancellation**
- 9.1 Orders may not be altered or cancelled without the written consent of JCNZ. If JCNZ agrees to alter or cancel the order, the Buyer shall indemnify JCNZ against any loss, damage and expense incurred by JCNZ in relation to the cancellation or alteration of that order including the cost of return freight, return shipping to factory of origin, items purchased from third Parties for inclusion in Goods and/or Services and all labour and engineering costs incurred by JCNZ in the execution or part execution of the Goods and/or Services and including compensation payable to any supplier of JCNZ and loss of profit.
- 10 Order Variation**
- 10.1 If JCNZ is asked to carry out additions or modifications to the Goods and/or perform additional or more frequent Services than those set out in JCNZ's quotation, they will be deemed a variation and the price will be adjusted accordingly. Any variation will take into consideration the nature and extent of such additions or modifications and the cost JCNZ incurs in performing them, but all other conditions of the quotation and these terms of sale will continue to apply.
- 10.2 If for any reason the Buyer requests JCNZ to furnish Goods and/or Services outside regular working hours, any overtime or additional expenses occasioned thereby these will be deemed a variation and the price will be adjusted accordingly.
- 11 Delivery Freight and insurance**
- 11.1 Delivery of the Goods will occur when the Goods are placed at the disposal of the Buyer (including its nominee or agent) at JCNZ's premises or in the case of Services, are supplied to the Buyer. Where JCNZ agrees to deliver the Goods to the site nominated by the Buyer, the Buyer agrees that all charges for freight and insurance arranged by the JCNZ on behalf of the Buyer will be at JCNZ's election, payable directly by the Buyer to the carrier and/or insurer or added to prices payable by the Buyer to JCNZ.
- 11.2 Goods delivered are expected to be examined by the Buyer promptly upon delivery. No claim will be recognised by JCNZ unless such claim is reported to JCNZ in writing within fourteen (14) days after the supply of the Goods to which the claim relates.
- 11.3 Risk in the Goods passes to the Buyer at the time of delivery and the Buyer shall keep the Goods insured.
- 12 Buyer delayed delivery**
- 12.1 Should the Buyer delay delivery of the Goods, JCNZ reserves the right to store the Goods and to obtain payment as though the Goods had been delivered and to recover storage, insurance and handling costs incurred due to the delay. JCNZ shall be entitled to make claims for progress payments when the Goods and/or Services are required ahead of scheduled delivery dates or when payment in full for the Goods and/or Services is delayed.
- 12.2 Extra costs incurred by JCNZ due to cessation of work occasioned by the Buyer's instructions or lack of instructions, by interruptions, by mistakes or work for which JCNZ is not responsible shall be reimbursed by the Buyer to JCNZ upon demand.
- 13 Progress claims, Off-site claims**
- 13.1 JCNZ reserves the right to issue partial payment invoices as Goods are either stored and protected off-site or supplied and certain Services are completed and will issue a final invoice on delivery of the Goods and/or completion of the Services (less progress claims). Such progress claims will show Goods made available and/or Services provided. Payment is to be made by the Buyer in accordance with the terms of these terms of sale.
- 14 Payment Terms and Credit Policy**
- 14.1 Subject to the continuing approval of JCNZ, the Buyer must pay all invoices rendered by JCNZ within 30 days of the date of JCNZ's tax invoice unless otherwise specifically stated. Invoices not paid within terms are considered overdue. JCNZ reserves the right to refuse to deliver any further Goods or Services to the Buyer if the Buyer has monies outstanding in excess of its approved credit limit or has any monies outstanding beyond the date due for payment on any JCNZ account. Where JCNZ has not approved continuing credit, all charges are due and payable upon despatch. If any overdue invoice required collection and/or legal action to procure payment, the Buyer agrees to pay all fees associated with such action. All payments shall be in the legal currency of New Zealand.
- 14.2 JCNZ will set and review the credit limit and terms at its discretion from time to time.
- 14.3 Any invoice must be a compliant tax invoice for GST purposes and in respect of amounts payable by the Buyer for Goods and/or Services supplied.
- 14.4 If any invoice becomes overdue, interest may be charged at Westpac Banking Corporation's Indicative Lending Rate plus four per cent on the sum outstanding for the period from the due date until the date payment is received. Payment will be credited first against interest accrued.

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- 14.5 The Buyer's credit facility shall remain in the name stated by the Buyer on JCNZ's Credit Application until JCNZ is notified in writing and consent to any change is given in writing by JCNZ. The Buyer must notify JCNZ as soon as there is a change in the legal entity, structure or management control of the Buyer's business.
- 14.6 If the Buyer commits an Insolvency Event then JCNZ may terminate the contract without prejudice to any other rights the Buyer may have.
- 15 Retention of monies**
- 15.1 Retention of monies owing to JCNZ is not acceptable unless otherwise specifically stated. If retentions are agreed, JCNZ shall have the option to provide a bank guarantee in lieu of the retention. Such guarantee shall be held for a period not in any event to exceed a maximum of the period of warranty provided in respect of the Goods and/or Services.
- 16 Payment and Title**
- 16.1 Property and ownership in the Goods will not pass to the Buyer but will remain in JCNZ until payment in full of the price of Goods and/or Services and all other amounts owing to JCNZ by the Buyer. The Goods are to be clearly identified by the Buyer as remaining the property of JCNZ until they are paid for in full. The Buyer must so long as JCNZ is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of JCNZ.
- 16.2 The Buyer may sell or deal in the ordinary course of business with the Goods and with the interest of JCNZ in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Buyer on trust for JCNZ. The Buyer agrees to accept this appointment as bailee and fiduciary.
- 17 Default of the Buyer**
- 17.1 The Buyer agrees to pay any recovery costs to mercantile agents, payable by JCNZ as a result of overdue payments, made 30 days past due date.
- 17.2 The Buyer agrees to pay any bank charges or merchant fees or like charges levied on JCNZ by any banker or other credit provider whose banking or credit card facilities are utilised by the Buyer for paying JCNZ any amounts on any accounts.
- 17.3 The Buyer agrees to pay any legal costs (on a full indemnity basis), costs incurred in the use of solicitors, commercial agents, stamp duties and any other expenses payable of and incidental to the performance or enforcement of any litigation on these terms and conditions, or any credit application or security documents signed by the Buyer, or any guarantor, together with any other collection costs and dishonoured cheque fees.
- 17.4 Should the Buyer fail to make due payment for any Goods and/or Services supplied by JCNZ or commit a breach of any term of the sale, or commit an Insolvency Event JCNZ may, without prejudice to any other rights it may have, do any or all of the following:
- 17.4.1 Withdraw any credit facilities which may have been extended to the Buyer and require immediate payment of all moneys owing or accrued;
- 17.4.2 Withhold any further deliveries of Goods or performance of Services required under the accepted order;
- 17.4.3 Suspend and/or terminate performance of any other contracts which JCNZ has with the Buyer.
- 17.5 Despite the above, JCNZ reserves the following rights in relation to the Goods until all amounts owed by the Buyer to JCNZ are fully paid:
- 17.5.1 Legal and equitable ownership of the Goods;
- 17.5.2 To enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- 17.5.3 To keep or resell any of the Goods repossessed pursuant to 17.5.2 above.
- 17.6 In the event that the Goods are resold, or Goods manufactured using the Goods are sold, by the Buyer, the Buyer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of JCNZ and must pay such amount to the JCNZ upon request. Despite the provisions above JCNZ is entitled to maintain an action against the Buyer for the purchase price of the Goods and/or Services.
- 17.7 Where the Buyer incorporates the Goods in or with any other product before property has passed to the Buyer, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of JCNZ.
- 17.8 If payment for the Goods is not made by the Buyer by the due date specified by JCNZ to the Buyer then the Buyer shall return the Goods to JCNZ upon demand. If the Buyer does not return the Goods to the JCNZ within 48 hours of receipt of the demand, JCNZ shall be entitled to enter upon the Buyer's premises at any time to do all things necessary to recover the Goods.
- 17.9 The Buyer shall be liable for all costs of whatsoever nature of and associated with the exercise of JCNZ's rights under this clause, which costs shall be payable on demand.
- 17.10 Should the Buyer sell the Goods to any sub-purchaser, the Buyer must obtain a specific acknowledgement from the sub-purchaser that property and ownership in the Goods will not pass to the sub-purchaser but will remain with JCNZ until payment in full of the purchase price of the Goods by the sub-purchaser to the Buyer.
- 18 Access**
- 18.1 It is the Buyer's responsibility to provide adequate access for entry and installation of Goods and/or Services covered by the contract, together with adequate access and rigging facilities for future Services. The Buyer will maintain the area in which the Goods are (or are to be) located free of extraneous materials and move any contents, fixtures, fittings or moveable partitions as required to facilitate the performance of Services by JCNZ.
- 18.2 The Buyer will grant JCNZ entry to the premises and access to the Goods at any time when required for the performance of the Services and allow JCNZ to make use of all existing building Services and maintenance facilities at the premises in the performance of the Services, and to remove any item of the Goods from the premises (if in JCNZ's opinion necessary) for the purpose of undertaking any repair or replacement thereof. The Buyer will only permit persons duly qualified to undertake service and repair work on the Goods other than in connection with its normal daily operation.
- 18.3 The Buyer warrants to JCNZ that the Buyer of the Services is the beneficial owner of the Goods or has obtained from the beneficial owner consent for JCNZ to carry out such Services and will indemnify and hold harmless JCNZ in respect of any claim made against JCNZ based on, or in any way arising from, a lack of such consent. It is the Buyer's responsibility to obtain and provide access, facilities, permits, approvals or licences as may be required for the performance of the Services.
- 19 Warranty**
- 19.1 JCNZ warrants the Goods and/or Services to be free from defects in material and workmanship:
- 19.1.1 Goods manufactured by it or sold under its name for a period of one year from the date of sale; and
- 19.1.2 installed systems and/or associated Services for a period of one year from the date of commencement of use
- 19.1.3 engineered systems and applied products for a period of one year from date of installation or eighteen months from date of shipment whichever occurs first;
- 19.1.4 labour Services for a period 30 days from the date of service; and
- 19.1.5 parts for a period of 90 days,
- 19.2 as the case may be, unless otherwise specifically stated.
- 19.3 The date of sale must be established by a receipt showing the purchase date, name of seller and product sold. If the date of sale cannot be determined, the warranty shall be determined by the date of manufacture code.
- 19.4 JCNZ's warranties do not extend to Goods subjected to misuse, neglect, accident or improper installation, or to products which have been altered or repaired by anyone except JCNZ. The Buyer, or any person receiving such a product during the duration of the warranty, shall contact JCNZ, as soon as any defect becomes known.
- 19.5 Where a warranty on JCNZ's labour is offered and is purchased separately, the cost of removal and replacement of faulty components by JCNZ is included.
- 19.6 If the location of the premises where the Goods are situated and/or Services are to be provided is more than 50km from JCNZ's place of business which issued the quotation, travel time and accommodation expenses will be invoiced separately to the Buyer.
- 19.7 Where the Goods are manufactured by a third Party or the Goods include products manufactured by a third Party, any warranty which may be given by JCNZ only applies to the extent JCNZ receives the benefit of that third Party manufacturer's warranty. If JCNZ provides equipment or repair materials that is covered by warranty from a third Party manufacturer JCNZ will transfer the benefits of that warranty to Buyer.
- 20 Limitation of liability**
- 20.1 The Buyer acknowledges and agrees that JCNZ has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any liquidated, indirect, special or consequential loss or damage whatsoever.
- 20.2 Despite any other provision to the contrary, JCNZ will not be responsible or liable for any claim where such claim arises as a result of:
- 20.2.1 damage after delivery, incorrect installation or incorrect operational procedures caused or contributed by the Buyer or a third Party;
- 20.2.2 noise and/or vibration
- 20.2.3 refrigerant lost or
- 20.2.4 mechanical or electrical overload, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials, deterioration due to extremes of environment, normal wear and tear or any other event or cause beyond the control of JCNZ.
- 20.3 The Consumer Guarantees Act 1993 does not apply to any goods or services acquired for business purposes. This clause does not exclude or modify any condition or warranty implied into the contract or these terms of sale by any law where to do so would contravene that law or cause any part of this clause to be void
- 20.4 To the maximum extent permitted by law, JCNZ excludes all conditions and warranties implied into these terms of sale and limit its liability for breach of any non-excludable condition and warranty, at JCNZ's option, to:
- 20.4.1 in respect of Goods:
- repairing the relevant Goods;
 - paying the cost of having the relevant Goods repaired;
 - request the return of the Goods and tender to the Buyer the purchase price paid by the Buyer; or

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- resupplying the relevant Goods or equivalent Goods; in respect of Services, resupplying the relevant Services.
- 20.4.2
- 20.5 JCNZ's total liability under any contract and these terms of sale shall not exceed the total dollar amount of the Goods and/or Services purchased by the Buyer under the contract.
- 20.6 The Parties agree that if any limitation or exclusion of liability under these terms of sale is held to be invalid under any applicable statute or rule of law, it will to that extent be omitted.
- 21 Return of Goods and adjustments**
- 21.1 Goods may not be returned unless JCNZ approval has first been obtained in writing and the original invoice number and date have been quoted for reference.
- 21.2 Before returning any Goods whether under warranty or not the Buyer must contact JCNZ and give the required information (e.g. model number, date code, detailed problem description, etc.) needed to expedite the return. Note: "Bad" or "doesn't work" are not adequate problem descriptions for warranty issues. If the return is authorised the Buyer will be given a Return Authorization (RA) number. RA's are valid for ninety (90) days.
- 21.3 A Return Authorization (RA) form must be returned with any Goods return and sent to the address indicated on the RA. All returns must be shipped prepaid. Returned Goods must be clearly identified and the RA number must appear on the outside of the shipping container.
- 21.4 Return due to error by JCNZ: Goods incorrectly received by the Buyer due to a JCNZ error (e.g. duplicate shipment, picked / shipped wrong catalogue number) may be returned, freight prepaid, after receiving authorization. No claim will be recognised by JCNZ unless such claim is reported to JCNZ in writing within 14 days after the supply of the Goods to which the claim relates.
- 21.5 Return due to failure under warranty: The remedy is a no charge replacement product or a returned product credit note based on the current Buyer's price. The product will be replaced on receipt of the returned Goods; or the credit will be issued within 40 days from receipt of the returned Goods. No product replacement or credit will be issued for Goods that test good. The Buyer may request the Goods be returned (at the Buyer's expense) within 30 days of issue of credit note.
- 21.6 Return due to Buyer error / Excess stock / Incorrect part selection: JCNZ is not obliged to issue an authorization to return excess Goods. If the return is authorised the Buyer will be given a Return Authorization (RA) number. RA's are valid for 10 days. The remedy is a returned product credit note, based on the current Buyer's price less restocking fees. The credit will be issued within 40 days from receipt of the returned Goods. Returns will not be accepted for Goods that were invoiced more than 3 months prior, or are special in any nature whatsoever or have a date code older than 18 months or are not stocked items, or are not of current design or are not in original sealed cartons or in original condition in the case of JCNZ products not supplied in sealed cartons, are not in new and unused condition upon receipt. Selected Goods may be accepted as excess return product and may also have a different re-stocking charge. Return must be shipped prepaid. Credits will not be issued prior to receipt and inspection of the product.
- 21.7 Return due to failure out of Warranty: Return of out of warranty defective Goods must be approved by JCNZ before return.
- 21.8 Change to Invoice amount without return of product: JCNZ will issue a partial credit note for incorrect invoice amount upon written request from the Buyer and acceptance by JCNZ.
- 22 Software**
- 22.1 JCNZ agrees to grant the Buyer a licence to use any software provided pursuant to Johnson Controls standard Licence agreement.
- 23 Intellectual property**
- 23.1 The Parties agree that:
- 23.1.1 the Intellectual Property of Party existing prior to the date of these terms of sale remains the sole and exclusive property of that Party; and
- 23.1.2 the right, title and interest in any Intellectual Property created by that provision of the Goods or the Services by JCNZ is vested in .
- 23.2 The Buyer must:
- 23.2.1 assign all right, title and interest in any Intellectual Property referred to in clause 22.1 to JCNZ or as JCNZ directs; and
- 23.2.2 provide to JCNZ all reasonable assistance requested by JCNZ to protect that Intellectual Property.
- 24 Hazardous materials**
- 24.1 The Services exclude any works associated with asbestos or hazardous materials. JCNZ shall not be required to perform any identifications, abatement, cleanup, control, or removal of asbestos or hazardous materials. The Buyer represents that, to the best of the Buyer's knowledge, there is no asbestos or hazardous material that will in any way affect the Services. Should JCNZ become aware of or suspect the presence of asbestos or hazardous materials, JCNZ shall have the right to stop work in the affected area immediately and notify the Buyer. The Buyer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Buyer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials.
- 24.2 Hazardous wastes remain the property and the responsibility of the Buyer even when removed from equipment or replaced by JCNZ.
- 24.3 The Buyer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.
- General terms**
- 25 Governing law**
- 25.1 The laws of New Zealand shall govern this contract.
- 26 Entire agreement**
- 26.1 This agreement between JCNZ and the Buyer shall be constituted in its entirety by these terms of sale together with JCNZ's quotation and any credit approval and/or guarantee required to be provided by the Buyer to JCNZ, together with any other terms, conditions or licences referred to in these terms and conditions which are issued by any Johnson Controls' company being a holding company or affiliated company to JCNZ.
- 26.2 All previous courses of dealing, trade usage, negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of the agreement are merged in and superseded by the agreement and shall be of no force or effect whatever and neither Party shall be liable to the other Party in respect of those matters.
- 26.3 Where there is more than one Buyer then the liability of each shall be joint and several.
- 26.4 The agreement shall be binding on the heirs, successors and assigns of the Parties.
- 26.5 No variation, waiver or cancellation of the agreement will be effective unless such variation, waiver or cancellation is expressly accepted and is in writing.
- 27 Indemnity**
- 27.1 JCNZ and the Buyer agree that JCNZ shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of JCNZ. JCNZ and the Buyer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their employees or any negligent act or omission by their employees or agents.
- 28 Assignment**
- 28.1 This Agreement cannot be transferred or assigned by either Party without the prior written consent of the other Party
- 29 Notices**
- 29.1 A notice given under this agreement must be signed by or on behalf of the Party giving it, addressed to the Party to whom it is to be given and:
- 29.1.1 delivered to that Party's address;
- 29.1.2 sent by pre-paid mail to that Party's address; or
- 29.1.3 transmitted by facsimile to that Party's address.
- 29.2 A notice given to a Party under this clause is treated as having been given and received:
- 29.2.1 if delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- 29.2.2 if sent by pre-paid mail, on the third Business Day after posting; or
- 29.2.3 if transmitted by facsimile to a Party's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- 30 Validity**
- 30.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms, but the rest of these terms of sale are not affected.
- 31 No alterations**
- 31.1 No employee, servant or agent of JCNZ is authorised to alter, vary, or waive these terms and conditions other than an employee in the role of General Manager or senior to that role.
- 32 Confidentiality**
- 32.1 The Buyer undertakes that it will not (except in the proper course of its duties under this agreement or as required by law or by JCNZ) disclose to any person any confidential information relating to JCNZ or this agreement of which it has become possessed as a result of this agreement or in the negotiations preceding this agreement including the terms of this agreement.
- 32.2 The obligations under this clause survive termination of this agreement.
- 33 Force Majeure**
- 33.1 If a Party becomes unable, wholly or partly, by Force Majeure, to carry out any duty or obligation under this agreement, that Party:
- 33.1.1 must give the other Party prompt written notice of the Force Majeure with reasonably full particulars of it and the probable extent to which that Party will be unable to perform, or be delayed in performing, that duty or obligation;
- 33.1.2 cannot be required to carry out that duty or obligation so far as it is affected by the Force Majeure during, but no longer than, the continuation of the Force Majeure; and
- 33.1.3 must do everything possible to remove the Force Majeure as quickly as possible.
- 33.2 The requirement that any Force Majeure must be overcome or remedied by doing everything possible does not require a Party to settle any strike,

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<p>or other labour dispute on terms contrary to that Parties' wishes or to contest the validity or enforcement of any law, regulation or order by way of legal proceedings.</p> <p>33.3 JCNZ does not offer any guarantee of supply of its Goods or Services nor does it accept responsibility for delays caused by Force Majeure. In the event of any such delay, the date or dates for performance of the contract by JCNZ shall be extended for a period at least equal to the time lost by reason of the delay or the delays subsequently caused therefrom.</p> <p>34 No liens</p> <p>The Parties agree that:</p> <p>34.1.1 a Party has no right or claim to any interest in any moneys, goods or property of the other Party; and</p> <p>34.1.2 a Party cannot claim any lien or other security over those moneys, goods or property.</p> <p>35 Errors & omissions</p> <p>35.1 Clerical errors and misprints in computations, typing, or otherwise in JCNZ documents including catalogues, price lists, delivery docket, invoice or statement, and credit note shall be subject to correction by JCNZ by means of reissue of the documents or by adjusting dockets with reference to the original transaction.</p> <p>36 Dispute resolution</p> <p>36.1 If a dispute arises out of or relates to this agreement, including any dispute as to breach or termination of this agreement or as to any claim in tort, in equity or under any statute, a Party cannot commence any court or arbitration proceedings relating to the dispute unless that Party has complied with this clause except where that Party seeks urgent interlocutory relief.</p> <p>36.2 A Party claiming that a dispute has arisen must give notice to the other Party specifying the nature of the dispute.</p> <p>36.3 On receipt of that notice by that other Party, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.</p> <p>36.4 If the Parties do not agree within 30 days of receipt of the notice, or any further period agreed in writing by them, as to:</p> <p>36.4.1 the dispute resolution technique and procedures to be adopted;</p> <p>36.4.2 the timetable for all steps in those procedures; and</p> <p>36.4.3 the selection and compensation of the independent person required for that technique,</p> <p>the Parties must mediate in accordance with the Leadr New Zealand Inc standard mediation agreement and the mediator shall be appointed by the Chairperson for the time being of Leadr.</p> <p>37 Personal Property Securities Act 1999</p> <p>37.1 The Buyer acknowledges that the terms contained herein and the terms of sale constitute a security agreement for the purposes of the PPSA.</p> <p>37.2 Pursuant to this security agreement the Buyer will grant a security interest in all its present and after acquired Goods supplied by JCNZ and their proceeds and JCNZ may register a financing statement in respect of any such security interest on the PPSR.</p> <p>37.3 Rights and Obligations</p> <p>37.3.1 The Buyer will provide such information and do such acts and execute such further documents as in the opinion of JCNZ may be necessary or desirable to enable JCNZ to perfect under the PPSA the security interest created by these terms as a first priority interest or with such other priority as JCNZ may agree in writing.</p> <p>37.3.2 The Buyer agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to this agreement or the security under this agreement.</p> <p>37.3.3 The Buyer waives their right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms.</p> <p>37.3.4 The Buyer agrees that none of their rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall apply to these terms.</p> <p>37.3.5 The Buyer also agrees, where JCNZ has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.</p> <p>37.3.6 The Buyer must not change their name without first notifying JCNZ of the new name, not less than 7 days before the change takes effect.</p> <p>38 Interpretation</p> <p>38.1 The following rules of interpretation apply unless the context requires otherwise.</p> <p>38.1.1 The singular includes the plural and conversely.</p> <p>38.1.2 A gender includes all genders.</p> <p>38.1.3 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.</p> <p>38.1.4 A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.</p> <p>38.1.5 A reference to a clause or schedule or attachment is to a clause of or schedule or attachment to this deed.</p> <p>38.1.6 A reference to a Party or any other agreement or documents includes the Party's successors and permitted assigns.</p> <p>38.1.7 A reference to any agreement or document is to that agreement or document as amended, novated, or replaced from time to time, except to the extent prohibited by this deed or that other agreement or document.</p> <p>38.1.8 A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative</p>	<p>provision substituted for it and all regulations and statutory instruments issued under it.</p> <p>38.1.9 A reference to dollars or \$ is to New Zealand currency.</p> <p>38.1.10 A reference to a right or obligation of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and separately.</p> <p>38.1.11 A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.</p> <p>38.1.12 Mentioning anything after include, includes or including does not limit what else might be included.</p> <p>38.2 Headings are for convenience only and do not affect interpretation.</p> <p>39 Definitions:</p> <p>In these terms of sale, unless otherwise indicated, these terms mean:</p> <p>Business Day any day except a public holiday throughout New Zealand or a Saturday or Sunday;</p> <p>Buyer the person with whom JCNZ has entered into a contract for the supply of any Goods and/or Service;</p> <p>Force Majeure an exception, event or circumstance which, in respect of the Party claiming Force Majeure:</p> <p>a) is beyond its control;</p> <p>b) could not reasonably have been insured or provided against before entering this agreement;</p> <p>c) having arisen, could not reasonably have been avoided or overcome; and</p> <p>d) is not substantially attributable to the other Party,</p> <p>such events or circumstances being limited to the following:</p> <p>a) war, hostilities (whether the war be declared or not), invasion, act of foreign enemies;</p> <p>b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;</p> <p>c) riot, commotion, disorder, strike or lockout by persons other than either JCNZ or the Buyer;</p> <p>d) the effect of any munition of war, explosive materials, ionising radiation or contamination;</p> <p>e) earthquake or tsunami; and</p> <p>f) acts of governmental agencies;</p> <p>Goods heating, ventilation, refrigeration and air-conditioning equipment and all other products or other property which, are supplied by JCNZ to the Buyer;</p> <p>GST the same meaning as in the Goods and Services Tax Act 1985;</p> <p>GST Act <i>The Goods and Services Tax Act 1985 (Cth)</i>;</p> <p>Insolvency Event a) a Party informs the other Party in writing, that the Party is insolvent;</p> <p>b) execution is levied against Party by a creditor;</p> <p>c) in relation to an individual person: the Party commits an act of bankruptcy, has a bankruptcy petition presented against him or her, is made bankrupt, makes a proposal for a scheme of arrangement or a composition; or has a deed of assignment or deed of arrangement made, or suffers any distress or execution to be levied on the parties property, real or personal, or allows any judgement entered to remain unsatisfied for seven days;</p> <p>d) in relation to a corporation: notice is given of a meeting of creditors with a view to the corporation entry into a deed of company arrangement, entering a deed of company arrangement, a controller administrator receiver or receiver and manager provisional liquidator or liquidator is appointed, an application is made to a court for the liquidation of the Corporation, an order for liquidation is made, resolves by special resolution that it be placed into liquidation voluntarily or a mortgagee of any property of the Corporation takes possession of that property;</p> <p>Intellectual Property all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;</p> <p>JCNZ Johnson Controls New Zealand Ltd GST 61 096 205;</p> <p>PPSA Personal Property Securities Act 1999</p> <p>PPSR Personal Property Securities Register</p> <p>Party the JCNZ or the Buyer as the case may be and Parties means both of them;</p> <p>Services Design, documentation, project management, installation, start-up/commissioning, service, maintenance and/or repair works supplied by JCNZ to the Buyer;</p>
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