Terms and Conditions of Sale

1. General
(a) In this Agreement, unless the context otherwise requires:

Agreement means this agreement together with TE’s quotation and credit approval provided by the Customer to TE.

Credit Arrangement means the credit terms available to Customer pursuant to an application by Customer for the provision of Goods on credit submitted to TE using TE’s standard credit application form and accepted in writing by TE (referred to as the Confidential Credit Application and Agreement);

Customer means the party to whom TE has agreed to supply Goods pursuant to the Agreement;

Goods means the goods and/or services agreed to be supplied by TE and purchased by Customer pursuant to the Agreement;

GST means the tax payable under the Goods and Services Tax Act 1985 or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in New Zealand and any regulation made under that Act;

Guarantee means the guarantee document provided by Customer or Customer’s directors, shareholders or principals to TE to guarantee the performance of the Agreement by Customer;

Proprietary Information means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trade marks and copyright in such information and intellectual property;

Purchase Order means the written purchase order by Customer to TE for the supply of the Goods;

TE means Tyco Electronics NZ Limited.

TE Group means that group of companies that has as its ultimate parent TE Connectivity Ltd.

(b) This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.

2. Quotations and Purchase Orders
(a) Subject to the paragraph (b) below, and unless TE has withdrawn its quotation, the Customer may make an order under that quotation for a period of 30 days from the date of issue or as otherwise specified in the quotation. Prices given in any quotation by TE are applicable to that quotation only, and will not apply in any other instances. A quotation from TE is not an offer to sell.

(b) In order to purchase the Goods, Customer must place with TE a Purchase Order setting out an order number, TE’s quotation number (if applicable), full description of the Goods to be purchased, the delivery date, delivery point and any other information required by TE. The Purchase Order may be accepted or rejected by TE at TE’s sole discretion.

(c) A contract shall be formed by and upon TE accepting from Customer a Purchase Order pursuant to the clause immediately above and each contract shall be governed by the Agreement.

(d) Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind TE, notwithstanding any statement by Customer in its Purchase Order that its terms and conditions prevail over the Agreement.

(e) Where the Goods to be supplied contain raw materials, the price of immediate termination of the Purchase Order under the Agreement;

(f) serve notice of immediate termination of the Purchase Order under the Agreement.

In neither case shall TE have any liability to Customer as a result of such termination, but Customer shall pay to TE the purchase price of Goods actually supplied or to be supplied under the Purchase Order under the Agreement.

3. Payment of Purchase Price

(a) Unless otherwise agreed in writing, TE accepts Purchase Orders subject to the condition that Customer agrees to pay the purchase price appearing on TE’s price list for those Goods current as at the date that TE accepts the Purchase Order.

(b) A copy of TE’s price list for the Goods is available on request. All prices on TE’s price list are subject to alteration without notice.

(c) The total purchase price, unless otherwise stated in the Purchase Order, includes GST but does not include any delivery charges, packaging, freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by Customer or reimbursed by Customer to TE, as TE may elect.

(d) The Customer shall pay the amount set out in the invoice issued by TE in accordance with the payment terms set out in the Customer’s credit approval (as may be amended by TE in writing from time to time in its sole discretion), or in the absence of specified payment terms within 30 days of the date of the invoice.

(e) If the Customer fails to pay the full amount on the due date TE may charge, and the Customer must pay, interest calculated daily on any monies which are overdue at the rate of 4% per annum over the Westpac Indicator Lending Rate as quoted from time to time. Any part of any invoice subsequently paid by the Customer shall be deemed to the extent of such avoidance not to have been made.

(f) The Customer must not set off any money owing or alleged to be owing to TE against money due by Customer to TE.

(g) Customer acknowledges that TE is a member of the TE Group. Customer agrees that TE and/or any other TE Group company is entitled to exercise a right of set off to the extent Customer is indebted to TE or to any TE Group company against any monies due by TE to Customer or any TE Group company on this or any other account.

4. Cancellation of Orders

Customer may not alter or cancel a Purchase Order without TE’s prior written consent. If TE agrees to alter or cancel the Purchase Order, Customer will indemnify TE against any loss, damage and expense incurred by TE in relation to the alteration or cancellation of that Purchase Order, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by TE in the execution or part execution of the Goods and including compensation payable to any of TE’s suppliers and loss of profit.

5. Return of Goods and Credits

(a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below.

(b) TE may reject any Goods that are wrongly supplied or oversupplied by notifying TE of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. TE may dispute any such claim.

(c) Goods referred to in the clause immediately above may be returned to Customer at Customer’s expense.

(i) the Goods are returned to TE’s premises by prior arrangement and with TE’s written approval within 7 days of delivery, at no cost to TE, unless delivered as the result of an administrative error by TE, in which case TE will bear the cost of return;

(ii) the Goods are accompanied by a dispatch note stating TE’s original invoice number and reason for return; and

(iii) the Goods are returned in an unsold, undamaged and resalable condition in their original packaging.

(d) Customer must not return any Goods to TE unless it has complied with the two clauses immediately above and has done all things necessary to permit TE to examine the Goods to TE’s satisfaction within that period.

6. Delivery and Storage

(a) All quoted delivery or consignment dates are estimates only. TE is not obliged to meet such dates and will not be liable to Customer by reason of any delays caused by any reason whatever.

(b) TE is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at Customer’s nominated delivery point (Delivery). Any unloading or loading shall be Customer’s responsibility, unless TE
otherwise agrees in writing.

(c) TE may deliver the Goods by instalments (where, in TE’s opinion, this is reasonable) and issue interim invoices to Customer.

(d) Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle TE to withhold or delay delivery of any remaining Goods ordered.

(e) If Customer is unable to collect the Goods at Customer’s nominated delivery point on the delivery day, TE may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods by the nature and value of the Goods and at Customer’s cost or expense. Customer must pay or reimburse all costs and expenses of such storage, insurance, demurrage, handling and other charges associated with such storage.

Notwithstanding Customer’s inability to collect the Goods, Delivery is deemed to have occurred.

7. Title and Risk

(a) Title to the Goods shall remain with TE until all monies owing by Customer to TE have been paid in full (whether such monies are payable under a specific contract or on any other account).

(b) Without limiting paragraph (a) above, the Customer acknowledges and agrees to the following:

(i) This Agreement creates and/or provides for an interest or interests in favour of TE in the Goods supplied by TE under this Agreement which will constitute a security interest in the Goods and the proceeds of sale of such Goods under the Personal Property Securities Act 1999 (PPSA).

(ii) Customer will, upon request by TE, enter into a security agreement, in a form provided by TE, pursuant to which TE will maintain a first priority (or such other priority as TE agrees in writing) security interest in the Goods and the proceeds of such Goods. The Customer shall act immediately in this regard when requested by TE and at the Customer’s own cost.

(iii) To the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for by, or perfected in the manner contemplated by, this Agreement.

(c) Until such time as Customer has paid in full all monies owing to TE, Customer shall:

(i) store the Goods separately and mark them so that they are clearly and easily identifiable as TE’s property and, if Supplier requests, inform TE of the location of the Goods;

(ii) hold the Goods as bailee for TE, subject to Customer’s right to deal with the Goods in the ordinary course of Customer’s business (Bailment);

(iii) indemnify TE against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by TE.

(d) If:

(i) a payment is not made in accordance with the Agreement;

(ii) Customer commits any other breach of the Agreement;

(iii) Customer becomes bankrupt, has an administrator, a receiver or a liquidator appointed; or

(iv) Customer is otherwise insolvent, Customer’s sole remedy with respect to breach of warranties set out in this Agreement shall be to repair or replace the Goods.

(iv) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of TE for a breach of any condition or warranty implied by law is limited to TE’s cost of the repair or replacement of the Goods supplied.

(h) All guarantees, warranties and conditions expressed or implied by law, whether direct or indirect, are hereby excluded to the fullest permitted by law.

(i) Customer waives any right, title and interest therein are the sole property of or licensed by TE, otherwise agrees in writing.

(j) Customer acknowledges and agrees that the Goods purchased by Customer are intended for use only in New Zealand, the acquisition of the Goods under this Agreement for the purposes of a business, as defined in the Consumer Guarantees Act 1993, the Consumer Guarantees Act 1993 shall not apply to this Agreement.

(i) TE’s total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

10. Proprietary Information

(a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of and licensed by TE and Customer shall gain no right, title or interest in the Proprietary Information whatsoever.

(b) Customer specifically acknowledges TE’s exclusive rights to ownership of any modification, translation or other work or adaptation of the Proprietary Information and any other improvements or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.

(c) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, clone or reverse engineer the Goods, or copy, modify or decompile any of TE’s documentation relating to the Goods.

11. Export/Re-Export/Resale

(a) The Goods supplied are intended for use only in New Zealand, unless TE otherwise agrees. If Customer exports or re-exports the Goods, it is Customer’s responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.

(b) Customer acknowledges that the Goods purchased by Customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on the (US) Denied Persons List or by an end-user engaged in activities related to weapons of mass destruction, including but limited to nuclear, radiological, chemical or biological weapons.

(c) If the Purchaser resells the Goods, it shall not, in connection with the resale, pay or offer to pay any person in return for the resale, any thing of value to an government official, entity or organization, any political party, any candidate for public office, or their employees or relatives, for the
purpose of influencing purchasing decisions or for any other improper purpose.

12. Miscellaneous

(a) The fact that TE fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. TE must agree in writing to any waiver.

(b) 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 the Agreement, but the rest of the Agreement is not affected.

(c) TE shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond TE’s reasonable control and not as a consequence of TE’s negligence.

(d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

(e) The Agreement is governed by and must be interpreted in accordance with the laws of the New Zealand. Customer unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

(f) Where there is more than one Customer then the liability of each shall be joint and several.

(g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to TE.

(h) Customer shall not assign this Agreement without TE’s prior written consent. Any change in the shareholding or effective control of the Customer shall constitute an assignment for the purposes of this clause and shall require TE’s prior written consent to be effective.