

Knowledge Network Terms and Conditions

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1 Terms and Conditions

- 1.1 These Terms and Conditions apply to your use of our Knowledge Network including access and posting content on any Forums and accessing and using any of our Publications that we make available or provide to you. Please read these Terms and Conditions carefully as they form the agreement governing your use of our Knowledge Network (**Agreement**). By using and accessing our Knowledge Network you are deemed to have read and agreed to be bound by these Terms and Conditions.

2 Definitions and interpretation

- 2.1 **Business Day** means a day when businesses are open for business in Wellington, New Zealand excluding Saturday, Sunday and public holidays as defined in the Holidays Act 2003.
- 2.2 **Commencement Date** means the date from which you are permitted to access the Online Publication Portfolio through our Website.
- 2.3 **Confidential Information** means information that:
- a. is by its nature confidential;
 - b. is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
 - c. is provided by either party or a third party 'in confidence';
 - d. is of a sensitive nature or commercially sensitive to a party; or
 - e. includes any methodology, pricing information, processes, applications, or techniques, and data (in any form) produced or acquired by either party or its Personnel in connection with this Agreement or the performance of the obligations, as well as the terms and conditions of this Agreement; and
 - f. includes, in the case of EEA, all information relating to any Publications.
- 2.4 **EEA, we, our or us** means Electricity Engineers' Association of New Zealand Incorporated.
- 2.5 **Forums** means the forums that are accessible via our Knowledge Network.
- 2.6 **GST** means goods and services tax payable under the Goods and Services Tax Act 1985 at the rate prevailing from time to time.
- 2.7 **Intellectual Property Rights** means all industrial and intellectual property rights (whether protectable by statute, at common law or in equity) as may exist anywhere in the world and whether registered or registrable including, but not limited to, patent rights, trade marks, copyright and design rights.
- 2.8 **Knowledge Network** means the online portal known as the "Knowledge Network" accessible via the Website.
- 2.9 **Licence** means the licence or subscription permitting you to access or use any Publications.
- 2.10 **Online Publication Portfolio** means the Publications we have agreed to provide access to you under this Agreement.
- 2.11 **Personnel** means employees (for the avoidance of doubt, this does not include contractors and agents).
- 2.12 **Publications** means publications, documents, manuals and other resources we have prepared relating to our industry including technical and safety guides and standards, safety and asset management resources, industry reports and links to relevant legislation and international information.

- 2.13 Purpose** means use within your business or organisation to assist in your day to day operations including:
- providing advice;
 - training or instructing others;
 - developing or improving systems or procedures;
 - developing or improving guidance or other information; and
 - auditing, assuring or otherwise checking systems, procedures and practices of third parties.
- 2.14 Renewal Period** means the 30 calendar days prior to a Subscription Anniversary Date.
- 2.15 Restricted Act** means any act restricted by section 16 of the Copyright Act 1994 and any amendment or replacement of that section.
- 2.16 Subscription** means a current right of access to the Online Publication Portfolio in accordance with this Agreement.
- 2.17 Subscription Anniversary Date** means the first anniversary of the Commencement Date and, provided you continue to renew your Subscription, the anniversary of the Commencement Date in each subsequent year.
- 2.18 Subscription Fee** means the fee payable from time to time by you to EEA to gain access to the Online Publication Portfolio.
- 2.19 Subscription Period** means either the 12 month period between the Commencement Date and the first Subscription Anniversary Date, or the 12 month period between a Subscription Anniversary Date and the next Subscription Anniversary Date.
- 2.20 Term** means the term of this Agreement commencing on the Commencement Date and ending on the date this Agreement is terminated in accordance with clause 9.
- 2.21 Website** means <http://www.eea.co.nz> and any subdomain of this domain name including publications.eea.co.nz and knowledge-network.eea.co.nz.
- 2.22 You and your** means the party (being a natural person) entering into the Agreement with EEA.
- 2.23** In this Agreement:
- headings are used for convenience only and will not affect its interpretation;
 - references to the singular include the plural and vice versa;
 - references to a party include that party's successors, executors, administrators
 - and permitted assignees (as the case may be);
 - references to clauses are to those clauses in this Agreement;
 - where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - all monetary amounts are stated exclusive of GST and in New Zealand currency. GST is payable at the same time and in the same manner as the amount to which it is applied, where that amount is subject to GST.

3 Access to Knowledge Network and Publications

- 3.1** During the Term, we grant you:
- a right to access and use the resources available through the Knowledge Network (including using any Forums); and
 - subject to payment of the Subscription Fee, a limited, non-exclusive, non-sub- licensable, non-transferable and revocable licence for you to use the Online Publication Portfolio for the Purpose and otherwise on the terms of this Agreement.

For the avoidance of doubt, you will only have access to the Online Publication Portfolio if you have paid the annual Subscription Fee.

- 3.2** Except as expressly set out in these Terms and Conditions, you do not have any licence or right to do any Restricted Act in relation to our Online Publication Portfolio.

4 Conditions of use of Publications

You may view any Publication in your Online Publication Portfolio in electronic PDF form, accessed through our Website, as often as required during the Term.

4.1 You may download a single copy of a Publication on the following terms:

- a. you may only retain that copy during the Term for use on your personal
- b. computer (including laptop, tablet, or mobile 'smart' device) for the Purpose;
- c. Publications must not be downloaded on to a CD ROM, data stick, floppy disk, external hard drive or any other storage device; and
- d. Publications must not be uploaded to a network, online storage facility or cloud storage platform.

4.2 You may print a single hard copy of any Publication and retain it for the Term to be used solely for the Purpose.

4.3 You must put in place and maintain all necessary security measures to prevent any unauthorised use, copying, reproduction of, or any other unlawful dealing with, any part of the Publication that would breach the terms of this Agreement or otherwise infringe any copyright in any Publication.

4.4 You must not place Publication on any physical or electronic network, or make any Publication available via a cloud storage facility, except as expressly set out in these Terms and Conditions.

4.5 Upon termination or expiry of your Licence for any reason, you must delete and destroy all complete or partial electronic or hard copies of the Publications in your or their possession or control, and upon request you must confirm to us in writing that you and they have done so.

5 Conditions of Use of Forums

5.1 You may post content on any Forum accessed through our Website, as often as required during the Term.

5.2 You acknowledge and agree that:

- a. we do not provide any monitoring or moderation of the Forums and that you are solely responsible for the content posted on the Forums by you;
- b. you will not post any content on our Forums that is pornographic or defamatory in nature or is unlawful including any content that breaches the intellectual property rights of any third party or that promotes violence or hatred, or is in violation of any applicable regulations; and
- c. we may take down, delete or otherwise remove at any time any content that you post on the Forums as we deem necessary at our discretion.

5.3 We acknowledge that any content posted on our Forums by you remains your property (as appropriate) and we have no rights to use such content.

5.4 You indemnify us, on a full indemnity basis, for any loss, damages, claims, liabilities, costs or expenses incurred or suffered by us arising from or related to your use of our Forums.

6 Intellectual Property Rights

6.1 EEA or its licensors retain ownership of all Intellectual Property Rights in the Publications and you do not obtain any ownership of the Knowledge Network (excluding any content posted on our Forums) and Publications under this Agreement.

6.2 You acknowledge that copyright exists in all Publications and that full legal and beneficial title to that copyright, and all other Intellectual Property Rights in and to any Publications, is at all times retained by EEA or its licensors.

6.3 Except as otherwise permitted under these Terms and Conditions, you must not reproduce, modify, merge with other software or documents, or circulate including via electronic mail, even for your internal purposes, any part of any Publications in any form without our prior written permission.

6.4 Except as otherwise permitted under these Terms and Conditions, you must not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Publications, or any part of it.

6.5 You acknowledge and agree that nothing in this Agreement gives you any right to use any of EEA's trade marks.

7 Payment of Subscription Fee

- 7.1** You are only entitled to gain access to the Online Publication Portfolio if you have paid, and continue to pay annually, the Subscription Fee.
- 7.2** Unless payment has been made online at the time of purchase, we will provide you with a tax invoice for your access to the Online Publication Portfolio for which payment is required. You must pay the amount set out in the tax invoice.
- 7.3** Unless you terminate your Subscription within the Renewal Period in accordance with clause 9.4a, we will, at your election, either:
 - a. issue you with a tax invoice for a further Subscription Fee for the subsequent Subscription Period, which you will be liable to pay in accordance with clause ; or
 - b. automatically process payment of the Subscription Fee using the debit or credit card previously provided to us.
- 7.4** If you receive a tax invoice on or before the third Business Day of the month, you must pay that tax invoice by the 20th calendar day of that month. If you receive a tax invoice after the third Business Day of the month, you must pay that tax invoice by the 20th calendar day of the month following the month it is received.
- 7.5** If you dispute either a tax invoice, part of a tax invoice, you must notify us within seven (7) Business Days of making payment online or of the date of receipt of the tax invoice.

8 Audit

- 8.1** If, at any time during or after the term of this Agreement, we believe on reasonable grounds that you have breached the Agreement, you agree that an appropriate independent consultant may act as an auditor. Within seven (7) days of being provided notice of an audit, you will permit the auditor to:
 - a. have reasonable access to your premises during normal business hours;
 - b. inspect your computers and records for the purpose of verifying compliance with this Agreement; and
 - c. disclose to us such information as appropriate to enable us to determine if this Agreement has been breached.
- 8.2** Any audit will be undertaken at our expense, unless the results of the audit and any subsequent review in accordance with clause 8.4 show a breach of the Agreement, in which case you will compensate us for any audit costs incurred.
- 8.3** Any auditor will be required to sign a confidentiality agreement.
- 8.4** If, as a result of the auditor's inspection or other evidence, we believe that there are irregularities in the manner of compliance with this Agreement, then without limiting our other rights and remedies, including under clause 9.5, we are entitled at our discretion to undertake:
 - a. a review relating to such irregularities; and/or
 - b. a full review of your performance under this Agreement,
- 8.5** and to impose such further conditions we deem reasonably necessary to ensure the proper performance of all obligations under this Agreement.

9 Breach and termination

- 9.1** Publications may only be used as expressly permitted by this Agreement. Any use outside the terms of this Agreement will constitute a breach and may constitute an infringement of our Intellectual Property Rights.
- 9.2** You must tell us as soon as you become aware of any actual, potential or threatened breach of this Agreement or misuse of any Publications by you or any third party. You agree to take all necessary steps to prevent or limit such breach or misuse, including those required by us, at your cost.
- 9.3** You acknowledge that damages may be an insufficient remedy for breach of this Agreement or an infringement of copyright or any other Intellectual Property Rights in any Publications, and that we may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement or to compel specific performance of this Agreement.

- 9.4 You may terminate your subscription at any time by providing us notice in writing, such notice will take effect:
- if provided during the Renewal Period, from the next Subscription Anniversary Date;
 - if provided outside the Renewal Period, from the Subscription Anniversary Date following the next Subscription Anniversary Date.
- 9.5 Without limiting any right granted under these Terms and Conditions, if you breach any term of this Agreement, we may, by notice in writing to you:
- terminate this Agreement and your Licence, with immediate effect; or
 - terminate your access to the Publications.

10 Confidential Information and privacy

- 10.1 Each party agrees that it will use reasonable security measures to safeguard the Confidential Information of the other party from unauthorised access or use by third parties.
- 10.2 Each party agrees not to use, or disclose to any third party, Confidential Information of the other party other than as required or permitted by this Agreement or law.
- 10.3 EEA treats its privacy obligations seriously and processes personal information in accordance with its privacy policy which can be found here: knowledge-network.eea.co.nz/privacy-policy/

11 Exclusion of warranties and liability

- 11.1 Except as expressly provided for in these Terms and Conditions, neither EEA or its Personnel give any warranties, or make any representations, about any Publications including, without limitation, any warranty that any Publication
- is free from defects or errors;
 - will continue to be available or be kept up-to-date; or
 - is fit for any purpose, irrespective of whether such purpose is communicated to EEA.
- To the fullest extent permitted by law, EEA excludes any implied terms, conditions and warranties from this Agreement.
- 11.2 You are solely responsible for the selection of the Publications that you procure or license from us, and any advice or recommendation given by us or our Personnel about any aspect of the Publications is intended for guidance only and is followed or acted upon at your own risk.
- 11.3 To the maximum extent permitted by law, we exclude any and all liability to you or any other person under this Agreement or in relation to any use of any Publications, regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise. Our liability and responsibility is excluded in respect of any and all loss or damage, whether direct or indirect, including, without limitation, loss of profits, loss of data, loss of business or anticipated savings, general and special damages, and consequential and incidental loss.
- 11.4 In no event will our liability to you exceed the amount paid by you to us for the Licence to which the liability relates.
- 11.5 Under no circumstances shall either party be held liable for any delay or failure in performance resulting directly or indirectly from an event outside its reasonable control, including, without limitation, technical failures such as internet, computer equipment, telecommunication equipment, electrical power failures, or from any extraordinary event, provided that this clause 11.5 does not apply to any obligation to pay money.

12 Dispute resolution

- 12.1 If a dispute arises under this Agreement, the parties will attempt to resolve the dispute using the dispute resolution process set out below.
- 12.2 Either party can initiate the dispute resolution process by giving written notice of the dispute to the other party (**Dispute Notice**). Upon the other party receiving the Dispute Notice, the parties will work together in good faith to resolve the dispute. Pending resolution of the dispute each party will, to the extent it is able, continue to perform its obligations under this Agreement.

- 12.3** If the parties cannot resolve the dispute by negotiation within ten Business Days following the date of delivery of the Dispute Notice, then either party may, by written notice to the other party (**Mediation Notice**), require the dispute to be submitted to mediation in New Zealand in accordance with the provisions of the then current Resolution Institute Mediation Rules (**Mediation**).
- 12.4** The Mediation will be conducted by a mediator and at a fee agreed by the parties. If the parties fail to agree such matters within ten Business Days following the date of delivery of the Mediation Notice, the Resolution Institute will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee.
- 12.5** A party to the dispute will only be entitled to pursue other remedies available to it at law or otherwise if the parties have failed to resolve the dispute within 20 Business Days after commencement of the Mediation.
- 12.6** Nothing in this clause 12 will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under this Agreement.

13 General

- 13.1 Variations to General Terms:** From time to time, EEA may alter these Terms and Conditions, and may give notice of any such change by email or by notification on our Website. Such change is deemed to have effect seven days from the date of the notice advising of the change. Our current Terms and Conditions are available from our Website and you are responsible for ensuring that you are familiar with them.
- 13.2 No Assignment:**
- a. You acknowledge that the Licence and all rights granted under the Agreement are personal to you and may not be transferred, sold, leased, licensed, rented or loaned via a time sharing, service bureau or other arrangement, or otherwise transferred, with or without consideration, to a third party.
 - b. You cannot transfer any of your rights or obligations under this Agreement without our prior written approval (which may be withheld at our discretion).
 - c. Under no circumstances may any Publications, whether in electronic or hard copy form, in full or in part, be sold or transferred to a third party.
- 13.3 Survival:** The provisions of this Agreement which, by their nature, are intended to survive termination or expiry of this Agreement, including those provisions relating to Intellectual Property Rights (clause 6), Payment (clause 7), Confidential Information and privacy (clause 10), and Exclusion of warranties and liability (clause 11), Dispute Resolution (clause 12) and General (clause 13), will remain in force after the expiry or termination of this Agreement.
- 13.4 Notices:**
- a. All notices to a party must be delivered by email to that party's email address or, in the case of a notice given by EEA, posted on the EEA website. Our address is admin@eea.co.nz.
 - b. A notice will be considered to be received at the time the email enters the recipient's information system and is not returned undelivered or as an error or at the time the notice is posted on the EEA website.
 - c. Any notice received after 5pm on a Business Day, or on a day that is not Business Day, will be considered to be received on the next Business Day.
- 13.5 Waiver:** A failure or delay by either party in exercising any right, power or privilege under this Agreement is not a waiver of such right, power or privilege.
- 13.6 Entire agreement:** This Agreement contains the entire agreement and understanding between the parties in relation to the subject matter of this Agreement. This Agreement supersedes any previous written or oral agreements or understandings between the parties about the relevant Publications.
- 13.7 Governing law:** This Agreement will be governed and interpreted in accordance with the laws of New Zealand. Regardless of where you are located, you are subject to New Zealand law and the exclusive jurisdiction of the New Zealand courts.