

# Sales Terms

Hastings Deering (Australia) Limited

These Sales Terms apply to the supply of all Goods and Services by the Company to the Applicant.

## **1. Purchase Orders**

### **1.1 Ordering procedure**

- (a) Where the Applicant wishes to acquire Goods or Services, the Applicant will send a Purchase Order to the Company.
- (b) Each such Purchase Order forms an agreement between the parties comprised of the Purchase Order and the terms of the Credit Application incorporated by reference in them.
- (c) The parties may enter into more than one Purchase Order and the details in each Purchase Order only apply to the Goods or Services to be provided under that Purchase Order.

### **1.2 Priority**

To the extent of any inconsistency between any of the terms of the Credit Application and the terms of any Purchase Order, the terms of the Credit Application prevail for the purposes of that Purchase Order.

### **1.3 Terms of Purchase Orders**

Each Purchase Order must contain:

- (a) the quantity and description of the Goods or Services to be purchased;
- (b) the price of the Goods or Services unless otherwise specified by the Company;
- (c) details of any Progress Payments (if applicable);
- (d) particulars of the proposed delivery of the Goods or Services, including the Delivery Date and Supply Address;
- (e) the name of the authorised representative of the Applicant making the Purchase Order; and
- (f) the Applicant's full name and, if relevant, CAN.

### **1.4 Variation of Purchase Orders**

A Purchase Order may not be varied except with the written consent of the Company.

## **2. Price**

### **2.1 Price includes all costs except GST**

The Price, unless otherwise agreed in writing, includes:

- (a) delivery of the Goods or Services to the Supply Address;
  - (b) the cost of packaging;
  - (c) loading and insurance charges; and
  - (d) sales tax (where applicable),
- but excludes GST.

### **2.2 GST**

- (a) Terms defined in the GST Act have the same meaning in this clause 2.2 unless defined otherwise in clause 16.1.
- (b) Unless expressly included, the consideration for any Supply under or in connection with these Sales Terms does not include GST.
- (c) To the extent that any Supply made under or in connection with these Sales Terms is a Taxable

Supply, the recipient must pay, in addition to the consideration to be provided under these Sales Terms for that Supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply.

- (d) The recovery of any amount in respect of GST by the Company under these Sales Terms is subject to the issuing of a Tax Invoice or Adjustment Note.

## **3. Goods delivery and passing of risk**

- (a) Delivery occurs and risk of Loss to Goods will pass to the Applicant (**Delivery**) on the earlier of:
  - (i) collection of the Goods by the Applicant;
  - (ii) delivery of the Goods to the Applicant; and
  - (iii) delivery of the Goods by the Company to a carrier nominated by the Applicant or arranged by the Company for the purpose of delivering Goods to the Applicant.
- (b) The Company is not liable for any failure in Delivery, including by any date agreed in writing by the Company as the date for Delivery or for delay in Delivery occasioned by any cause whatsoever, whether or not beyond the control of the Company.
- (c) The Company will use its reasonable endeavours to make Delivery in accordance with the terms of a Purchase Order but will not be liable for any failure to make Delivery in accordance with any particular requirements of the Applicant.
- (d) Failure to make Delivery of part or all of the Goods the subject of a Purchase Order at any agreed Delivery time will not entitle the Applicant to terminate the Purchase Order or to claim compensation of any nature.
- (e) The Applicant may not reject Goods if Delivery is late.

## **4. Services terms**

- (a) The Applicant may request a Service Workshop Costing in relation to Services to be provided by the Company.
- (b) The Services performed in connection with a Service Workshop Costing are performed subject to the terms of this Credit Application and to the extent of any inconsistency between any of the terms of the Credit Application and the terms of any Service Workshop Costing, the terms of the Credit Application prevail.
- (c) The Price estimate contained in a Service Workshop Costing:
  - (i) is an estimate only and may have been prepared by a visual inspection of the Serviced Equipment only; and
  - (ii) is based, as applicable, on award rates, prices of material, general factory costs, general overhead charges, insurance and exchange rates, customs duties and other costs existing as at the date of the Service Workshop Costing and any changes to such matters either before acceptance or during progress of the Services

are payable by the Applicant in addition to the Price estimate set out in the Service Workshop Costing.

- (d) The Applicant agrees that where the Company, following the commencement of Services, considers that additional work, parts or other materials are required for the Services which are not provided for in the Service Workshop Costing, the Company may, in its absolute discretion, cease providing the Services and request that the Applicant accept a revised Service Workshop Costing in respect of the Services. The Applicant acknowledges and agrees that it must make payment for any Services performed by the Company prior to the issuance of the revised Service Workshop Costing.
- (e) The Applicant agrees that the Company is not liable or responsible for any Loss suffered by the Applicant arising by, through or in connection with:
  - (i) the Company's repair of the Serviced Equipment;
  - (ii) any delay in the repair of the Serviced Equipment including due to acts of god, war or strikes or lockout, or any other cause beyond the Company's control or as a result of its inability to procure the parts and other materials necessary for the purposes of the relevant Services; and
  - (iii) the increase in costs of material and/or labour.

## **5. Security Interests**

### **5.1 Retention of title – Goods supplied**

- (a) Notwithstanding that risk in Goods passes pursuant to clause 3, title to and ownership of Goods remains with the Company and does not pass to the Applicant until all amounts owing by the Applicant to the Company with respect to those Goods are paid in full.
- (b) The Applicant acknowledges that until title to and ownership of Goods passes to the Applicant, the Applicant is in possession of the Goods for and on behalf of the Company as bailee.
- (c) Subject to clause 5.1(e), until payment is made for Goods, the Applicant shall store those Goods separately and in such a manner that those Goods are clearly identified as the property of the Company.
- (d) The Applicant grants to the Company an irrevocable licence to enter any of the Applicant's premises, exercisable upon a Termination Event, which licence to enter permits the Company by its Personnel, at its sole option to enter the Applicant's premises and repossess and remove all Goods on the premises for which title has not passed to the Applicant. The Applicant consents to such actions and agrees that the Company will not be liable for any Loss suffered by the Applicant as a result of the Company taking such actions.
- (e) Until title to and ownership of the Goods passes to the Applicant in accordance with this clause 3, the Applicant must not, without the written consent of the Company:
  - (i) grant or register, or permit to be granted or registered any Security Interest over any of the Goods in favour of another person which rank in

priority to the Company's Security Interest in the Goods; or

- (ii) sell or dispose or give possession or control of the Goods to another person.

### **5.2 Services lien**

- (a) The Applicant must, if requested by the Company, make full payment for Services prior to the relevant Serviced Equipment leaving the possession of the Company or on such further or other terms as the Company may agree in writing.
- (b) The Applicant agrees that the Company has a lien over, and may in its absolute discretion, retain possession of any Serviced Equipment until such time as all amounts which are owing by the Applicant to the Company in connection with Services have been paid in full.
- (c) If an Applicant has not confirmed the terms of a Service Workshop Costing within one month from the date of that Service Workshop Costing, then the Company may charge a rental fee to the Applicant for the physical space occupied by the Serviced Equipment, based on the working value of the workshop area occupied. The Applicant agrees that the Company may retain the Serviced Equipment until full payment of that rental fee together with any additional charges for work undertaken in connection with the preparation of the Service Workshop Costing.
- (d) If any person (other than the Applicant) claims right, title or interest in Serviced Equipment and tenders full payment of the amounts owing to the Company in connection with the relevant Services, then subject to the Company giving the Applicant 48 hours written notice, the Company may accept that payment and release the Serviced Equipment to that person and the Applicant waives all liability of the Company in respect of the release of the Serviced Equipment.

## **6. Payment**

### **6.1 Invoicing**

The Company will invoice the Applicant for each Purchase Order (the **Invoice**), by notice in writing with each Invoice setting out the Price payable by the Applicant and the quantity of Goods or Services supplied for that Purchase Order.

### **6.2 Payment**

Subject to clause 6.3, the Applicant must pay the Price for the Goods or Services supplied to the Applicant:

- (a) in Immediately Available Funds in accordance with clause 3 of the Credit Terms; or
- (b) in any other way that the Company directs in writing to the Applicant.

### **6.3 Progress Payments**

The Company may request that the Applicant make one or more upfront or progress payments in respect of particular Goods or Services.

## **7. Goods Credit Return Policy**

- (a) Except as otherwise set out in these Sale Terms (in particular clause 14), Customers are not entitled to cancel Purchase Orders received by the Company and any rights to return Goods are expressly set out in this clause 7.
- (b) Customers can initiate the Goods Credit Return

Policy by calling 131 228 or using the contact us option on our website at [hastingsdeering.com.au](http://hastingsdeering.com.au).

- (c) Upon receipt of the Customer's request for a Goods Credit Return, the Company shall notify the Customer of the outcome of the request as soon as practicable following the Company's assessment of the Goods.
- (d) Subject to this clause 7, credit will be given to the Applicant in relation to Goods returned by the Applicant within 30 days of Delivery provided that:
- (e) the Goods are in "as new" re-saleable condition; and
- (f) a copy of the Company's original Invoice or packing slip accompanies the Goods being returned.
- (g) Goods will not be accepted for credit after 30 days of Delivery.
- (h) The following Goods are strictly non-returnable:
  - (i) Goods that are batteries, ball and roller bearings, cups, cones, seals, gaskets, opened kits or items made to order (e.g. hoses);
  - (ii) Goods procured at the request of the Applicant from an overseas source;
  - (iii) Goods supplied to the Applicant as used Goods;
  - (iv) Goods that are an electronic control module (ECM) or other electronic equipment that has been fitted even if removed prior to the machine resuming operation; and
  - (v) Goods with a value of less than \$10.00.
- (i) The value credited for the return of Goods in accordance with clause 7(a), if any, will be in the absolute discretion of the Company, and in any case limited to the original Price of the Goods less the following deductions:
  - (i) a 3.5% handling and restocking charge in relation to Goods held in stock by the relevant store location of the Company from which the Goods were initially ordered;
  - (ii) a 10% handling and restocking charge in relation to Goods not held in stock by the relevant store location of the Company from which the Goods were initially ordered; and
  - (iii) any procurement costs (including freight costs) incurred by the Company in connection with the original sale of the Goods.
- (j) Any freight costs incurred in the return of the Goods to the Company are for the account of the Applicant.
- (k) All Goods are returned at the Applicant's risk. If required, it is the Applicant's responsibility to arrange insurance cover for Goods during return transportation to

the Company.

- (l) Remanufactured cores must be returned within 90 days for core credit consideration. Dealer exchange cores not returned within 14 days are subject to a late return penalty of 2.5% of the new value of the purchased component. All dealer exchange cores become property of the Company.

## 8. Applicant indemnity

The Applicant indemnifies the Company against any Loss which the Company suffers, incurs or is liable for in connection with the Credit Application and each Purchase Order including, but not limited to:

- (a) any act or omission of the Applicant; and
- (b) any breach of the Credit Application or a Purchase Order by the Applicant.

## 9. Goods and Services warranties

### 9.1 Goods warranties

- (a) **Manufacturer warranties** – Goods are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the applicable manufacturer's warranty statements are available on request.
- (b) **Other Goods warranty** – unless expressly notified by the Company to the Applicant, the Company gives no warranty to the Applicant in respect of Goods. The Company may offer a specific warranty in relation to specific Goods. Copies of applicable warranty statements are available on request.
- (c) **Used Goods** – used Goods are sold in an 'as is' condition. No warranty of any kind is implied or given by the Company in relation to used Goods.

### 9.2 Services warranties

- (a) Services may be supplied subject to the Company's standard warranty in relation to faulty workmanship. Copies of the applicable warranty statements are available on request.
- (b) Parts supplied by the Company in carrying out Services are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the manufacturer's warranty statements are available on request.

### 9.3 Exclusions

- (a) To the extent permitted by law and except as set out in these Sales Terms:
  - (i) all express and implied warranties, guarantees and conditions however arising are excluded;
  - (ii) the Applicant releases the Company from, and shall indemnify, keep indemnified and hold harmless the Company in respect of all claims arising in connection with the Goods and Services;
  - (iii) the Applicant acknowledges that it has not relied upon any representation made by the Company, which has not been stated expressly in these Sales Terms;
  - (iv) the Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from Goods and Services or any defect; and
  - (v) any claims for other loss or damage of any kind

including, without limitation, loss from failure of the Goods and Services to operate for any period of time, economic, moral, direct, immediate, special, indirect or consequential loss or damage are expressly excluded.

- (b) Notwithstanding anything else in these Sales Terms, unless the Goods are goods of a kind ordinarily acquired for personal, household or domestic use or consumption, any liability of the Company to the Applicant arising under statute which may not be excluded, restricted or modified by agreement is limited to an amount equal to:
  - (i) the cost of replacing the Goods;
  - (ii) the cost of obtaining an equivalent product; or
  - (iii) the cost of having the Goods repaired, whichever the Company may elect.
- (c) Notwithstanding anything else in these Sales Terms, the Company also limits its liability for a breach of a condition or warranty in respect of the supply of Services to:
  - (i) supplying the Services again; or
  - (ii) the payment of the costs of having the Services supplied again,

whichever the Company may elect.
- (d) Nothing in these Sales Terms is intended to exclude, restrict or modify rights which the Applicant may have under the Australian Consumer Law or otherwise which may not be excluded, restricted or modified by agreement.

## 10. General Representations and warranties

### 10.1 Reliance

The Applicant acknowledges that the Company is relying on the representations and warranties made to it in connection with these Sales Terms.

### 10.2 Representations

The Applicant represents and warrants to the Company that:

- (a) if it is a company:
  - (i) it is duly incorporated and validly existing under the laws of its place of incorporation; and
  - (ii) it has the corporate power to own its own assets and to carry on its business as it is now being conducted;
- (b) the Applicant Representatives have authority to bind the Applicant in respect of any matters stated the Credit Application and each Purchase Order;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of the Credit Application and each Purchase Order, in accordance with its terms;
- (d) it has power to enter into and perform its obligations under the Credit Application and each Purchase Order and to carry out the transactions contemplated by the Credit

Application and each Purchase Order;

- (e) its obligations under the Credit Application and each Purchase Order are valid and binding and are enforceable against it in accordance with their respective terms subject to any necessary stamping and registration, the availability of equitable remedies and laws relating to the enforcement of creditor's rights;
- (f) the execution, delivery and performance of the Credit Application and each Purchase Order and the transactions under them do not:
  - (i) if applicable, breach its constitution or other constituent documents or any relevant trust deed or partnership agreement;
  - (ii) breach any law or decree of any court or official directive which is binding on it;
  - (iii) violate any other document or agreement to which it is expressed to be a party or which is binding on it or any of its assets; or
  - (iv) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (g) no litigation, arbitration, tax claim, dispute or administrative or other proceeding (which has not been disclosed to the other party in writing) has been commenced, is pending or, to its knowledge, threatened in writing against it which is likely to have an adverse effect upon it or its ability to perform its financial or other obligations under the Credit Application and each Purchase Order;
- (h) an Insolvency Event has not occurred in relation to it; and
- (i) unless expressly stated, it does not enter into the Credit Application or any Purchase Order as a trustee.

## 10.3 Representations by Authorised Representatives

- (a) The individual(s) whose name(s) appear on the purchase order:
  - (i) represents that the Applicant is a currently existing legal entity;
  - (ii) warrants that the matters in clause 10.2 are true and accurate; and
  - (iii) warrants that s/he has the actual authority of the Applicant to place Purchase Orders pursuant to this Credit Application.
- (b) The representative of the Applicant who places Purchase Order warrants that s/he has the actual authority of the Applicant to place Purchase Orders pursuant to this Credit Application.

## 11. Confidentiality

### 11.1 Obligation of confidentiality

- (a) Subject to clause 11.2, the Applicant must keep secret and confidential, and must not divulge or disclose any of the Company's Confidential Information.
- (b) The Applicant must take all reasonable steps to ensure that any person to whom it discloses Confidential Information under the Credit Application or a Purchase Order does not make public, or disclose, the Confidential Information.
- (c) If an Applicant delegates any of its authorities, powers, duties or discretions under the Credit Application or a Purchase Order to an entity or



person who is not a director, officer or employee of the Applicant (**Delegate**), the Company may request the Applicant to procure the Delegate to enter into a confidentiality agreement with the Company prior to any of the Confidential Information being provided to the Delegate.

## 11.2 Exceptions

Clause 11.1 does not apply where the relevant Confidential Information:

- (a) is public knowledge (other than as a result of a breach of the Credit Application);
- (b) subject to clause 12(h), is required by law to be disclosed, provided the Applicant has notified the Company of such requirement as soon as possible after becoming aware of such requirement; or
- (c) is disclosed to the Applicant's directors, officers, employees, financial advisers, analysts and legal representatives for the purpose of exercising rights under and performing the Credit Application or a Purchase Order.

## 12. Personal Property Securities Law

- (a) The Applicant acknowledges that under these Sales Terms the Applicant grants Security Interests to the Company including a retention of title in respect of the Goods (in accordance with clause 5.1) and a lien in respect of the Serviced Equipment (in accordance with clause 5.2).
- (b) The Applicant acknowledges that the Credit Application constitutes a Security Agreement.
- (c) The Security Interests arising under these Sales Terms attach to the Goods or Serviced Equipment (as applicable) when the Applicant obtains possession of the Goods or Serviced Equipment (as applicable) and the parties confirm that they have not agreed that any Security Interest arises under these Sales Terms at any later time.
- (d) The Applicant acknowledges that the Company may perfect its Security Interests by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act.
- (e) The Applicant undertakes to do anything reasonably required by the Company to enable the Company to register its Security Interests, with the priority the Company requires, and to maintain the registration.
- (f) The Applicant must pay the Company all registration and enforcement costs and expenses which the Company may incur in:
  - (i) preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interests that are granted to the Company under these Sales Terms;
  - (ii) maintaining those registrations; and

(iii) enforcing any Security Interests granted to the Company under these Sales Terms.

- (g) The Company does not need to give the Applicant any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.
- (h) The parties agree that neither party will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Applicant will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.
- (i) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these Sales Terms except that the following provisions of the PPS Act will not apply:
  - (i) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Applicant;
  - (ii) subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - (iii) section 125 (obligation to dispose of or retain collateral);
  - (iv) section 130 (notice of disposal), to the extent that it requires the Company to give the Applicant a notice;
  - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (vi) subsection 132(4) (statement of account if no disposal);
  - (vii) section 135 (notice of retention);
  - (viii) section 142 (redemption of collateral); and
  - (ix) section 143 (reinstatement of security agreement).

## 13. Intellectual Property

The Applicant acknowledges that the Company is and remains the owner of all Intellectual Property Rights used on or in relation to the Goods and Services and advertising materials supplied in connection with the Goods and Services.

## 14. Termination

- (a) It is a Termination Event if:
  - (i) any amount payable by the Applicant to the Company is not paid when due;
  - (ii) the Applicant, or anyone making such a representation on behalf or purporting to make to make such a representation on behalf of the Applicant, makes any false representation (whether by act or omission) in respect of the Credit Application;
  - (iii) the Applicant breaches or fails to comply with any term of the Credit Application;
  - (iv) an Insolvency Event occurs with respect to the Applicant or a guarantor of the Applicant's indebtedness to the Company;
  - (v) any guarantor of the Applicant's indebtedness to the Company revokes a guarantee;
  - (vi) a change in control of the Applicant occurs; or
  - (vii) the Applicant or any of its representative fails to qualify or correct any representation that becomes wholly or partly false after the executing of this Credit Application.
- (b) If a Termination Event occurs the Company is

entitled (without prejudice to any other right or remedy) at its option to immediately do any one or more of the following:

- (i) declare all amounts actually or contingently owing by the Applicant to the Company, whether or not due and payable, to be immediately due and payable;
- (ii) refuse to supply Goods or Services to the Applicant;
- (iii) terminate the Credit Application and refuse to provide credit to the Applicant; or
- (iv) repossess and remove all Goods for which title has not passed to the Applicant in accordance with clause 5.1(d).

## **15. General**

### **15.1 Assignment**

- (a) The Company may transfer, assign, novate or sub- contract any of its rights or obligations under the Credit Application without the prior written consent of the Applicant.
- (b) The Applicant's rights and obligations arising out of or under the Credit Application are not assignable by the Applicant without the Company's prior written consent.

### **15.2 Further Assurances**

The Applicant must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Company) required by law or reasonably requested by the Company to give effect to these Sales Terms or any obligation under them.

### **15.3 Waiver**

- (a) Waiver of any right by the Company arising from a breach of these Sales Terms by the Applicant or on the occurrence of a Termination Event must be in writing and executed by the Company.
- (b) A failure to exercise, a delay in exercising, or a partial exercise of, a right by the Company created under or arising from a breach of these Sales Terms or on the occurrence of a Termination Event does not result in a waiver of that right.

### **15.4 Relationship between the parties**

These Sales Terms are not intended to create a partnership, joint venture or agency relationship between the parties.

### **15.5 Severability**

- (a) A provision of, or the application of a provision of, these Sales Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of:
  - (i) that provision in any other jurisdiction; or

- (ii) the remaining provisions in that or any other jurisdiction.

- (c) Where a clause in these Sales Terms is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these Sales Terms.

### **15.6 Variation of Sales Terms**

The Company may, in its absolute discretion, vary these Sales Terms (including the withdrawal of credit) at any time by notice to the Applicant by any of the following methods:

- (d) by written notice to the address listed in section 1 (**Details of Applicant**) of the Credit Application;
- (e) by email notice to the email address listed in section 1 (**Details of Applicant**) of the Credit Application; or
- (f) by uploading the varied Sales Terms onto the public website of the Company.

### **15.7 Entire agreement**

The Credit Application replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

### **15.8 Governing law and jurisdiction**

These Sales Terms are governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

### **15.9 Dispute**

In the event of a dispute, either party may:

- (a) Delivery a written notice to the other party which:
  - (i) states that it is a notice of dispute under this clause and identifies the dispute;
  - (ii) states the alleged relevant facts that are relied on; and
  - (iii) states the terms on which it is alleged the Dispute should be resolved (Notice of Dispute).
- (b) Within 7 days of delivery of a Notice of Dispute, nominated representatives of the parties must meet to attempt to resolve the dispute.
- (c) If within 14 days of a delivery of a Notice of Dispute, the dispute has not been resolved, the parties must nominate senior management who must attempt to resolve the dispute.
- (d) If, within 7 days of the dispute being referred to senior management, the dispute has not been resolved, either party may commence proceedings.
- (e) Despite the existence of a dispute, the parties will continue to perform their obligations under the purchase order (including any obligations to make a payment).
- (f) Neither party may commence proceedings in court in relation to a dispute unless the party has complied with this clause 15.9 or are seeking equitable relief.

## **16. Definitions**

### **16.1 Defined Terms**

In these Sales Terms:

**Administrator** means a receiver, receiver and manager, judicial manager, liquidator, administrator or like official.

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Applicant** means the person seeking credit as set out in section 1 (*Details of Applicant*) of the Credit Application.

**Applicant Representative** means a duly authorised representative of the Applicant advised by the Applicant to the Company in writing.

**Company** means Hastings Deering (Australia) Limited ABN 49 054 094 647.

**Confidential Information** means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Company's business or a Purchase Order.

**Credit Application** means the credit application to which these Sales Terms are annexed including and incorporating these Sales Terms and the Credit Terms.

**Credit Terms** means the terms and conditions set out in this Annexure 1 (*Credit Terms*), as amended from time to time.

**Delegate** has the meaning given to that term in clause 11.1(c).

**Delivery** has the meaning given in clause 3.

**Delivery Date** means the date specified as such in the Purchase Order for the delivery of Goods or Services.

**Goods** means the goods, equipment, components, parts, accessories and materials supplied, or to be supplied, by the Company to the Applicant as requested by the Applicant from the Company.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Immediately Available Funds** means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Company.

**Insolvency Event** means where the Applicant:

- (a) is insolvent, bankrupt or unable to pay its debts as they fall due;
- (b) enters into an arrangement with its creditors;
- (c) takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up or bankruptcy of the Applicant; or
- (d) has a winding-up or bankruptcy order made against it or passes a resolution for winding-up or bankruptcy.

**Intellectual Property Rights** means all intellectual property rights throughout the world, whether present or future, including rights in relation to copyright, trade secrets, know how, trademarks (whether registered or unregistered or whether in word or logo/ device form), brand names, designs, patents and patentable inventions, semiconductor or circuit layout rights, including the right to apply for registration of any such rights.

**Invoice** has the meaning given to that term in clause 6.1.

**Loss** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a solicitor/client basis.

**Personnel** means the directors, officers, employees, servants, agents, representatives, invitees of the relevant party or any of its Related Bodies Corporate.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**Purchase Order** means an order to purchase Goods or Services pursuant to clause 1.

**Price** means the price of the Goods or Services as specified by the Company.

**Proceeds** means "proceeds" as defined in section 31 of the PPS Act.

**Progress Payment** means that portion of the Price, if any, payable in accordance with clause 6.3.

**Related Bodies Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Sales Terms** means the terms and conditions set out in this Annexure 2 (*Sales Terms*), as amended from time to time.

**Security Agreement** means a security agreement within the meaning of the PPS Act.

**Security Interest** means a security interest within the meaning of the PPS Act.

**Services** means the services supplied, or to be supplied, by the Company to the Applicant as ordered by the Applicant, or the Applicant's representative, from the Company.

**Service Workshop Costing** means an estimate of the Price of a Service provided by the Company to the Applicant.

**Serviced Equipment** means goods, equipment, components, parts, accessories and other materials which are owned, leased or hired by the Applicant and are the subject of Services provided by the Company.

**Supply Address** means the address of the premises to which Goods are to be delivered or at which Services are to be performed.

**Termination Event** has the meaning set out in clause 14.

**Verification Statement** means a verification statement within the meaning of the PPS Act.

## 16.2 Interpretation

In these Sales Terms:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of these Sales Terms.
- (b) The singular includes the plural and the plural includes the singular.
- (c) The word 'includes' in any form is not a word of limitation.
- (d) Words of any gender include all genders.
- (e) Other parts of speech and grammatical forms of a word or phrase defined in these Sales Terms have a corresponding meaning.
- (f) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (g) A reference to a clause, party, schedule or attachment is a reference to a clause of, and a party, schedule or attachment to, these Sales Terms and a reference to these Sales Terms includes any schedule and attachment.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that



document.

- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than these Sales Terms includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to insolvency includes appointment of an Administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (n) No provision of these Sales Terms will be construed adversely to a party because that party was responsible for the preparation of these Sales Terms or that provision.
- (o) A reference to dollars or \$ is a reference to the lawful currency of Commonwealth of Australia unless expressly stated to the contrary.
- (p) A reference to a body, other than a party to these Sales Terms (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

