

GENERAL TERMS AND CONDITIONS OF SALE FOR EQUIPMENT AND ENGINEERING SERVICES

1. Supply of Goods and/or Services

1.1. Sales Terms

These general terms and conditions (**Sales Terms**) apply to the sale of all new and used equipment and associated components, accessories and materials (**Goods**), and/or labour, engineering or other services (**Services**) supplied, or to be supplied, by Hastings Deering (Australia) Limited ABN 49 054 094 647 (**Supplier**) to the person and/or company (**Customer**) specified in the quotation or other documentation produced by the Supplier which are incorporated by reference these general terms and conditions (together, the **Contract**).

1.2. Prior contract to prevail

If a separate contract has already been entered into, and remains in effect, between the Supplier and the Customer that applies generally to the supply of Goods or Services covered by these Sales Terms, then the terms contained in that contract will apply and prevail over these Sales Terms in the event of any inconsistency.

1.3. Supplier acceptance

No quotation or estimate provided by the Supplier to the Customer constitutes an offer to sell or to contract and no binding contract will arise as a result of any purchase order or other documentation received by the Supplier from the Customer in relation to a quotation or estimate (**Offer**) except as a result of the acceptance by the Supplier of an Offer made by the Customer that incorporates these Sales Terms.

1.4. Customer credit application

If the Customer has made an application to the Supplier for the provision of credit in relation to the sale of Goods or Services contemplated by the Contract, then the Customer acknowledges that the Supplier's obligations under the Contract remain subject at all times to the Supplier being prepared to provide such credit to the Customer on terms satisfactory to the Supplier.

2. Priority

2.1. Entire agreement

Except as expressly provided for in clause 1, the Contract contains the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all prior agreements and understandings between the parties in connection with the subject matter of the Contract. In particular, no prior explanation or information provided by any party to another:

- (a) affects the meaning or interpretation of the Contract; or
- (b) constitutes any collateral agreement, warranty or understanding between any of the parties.

2.2. No legal effect of previous warranties, representations, terms and conditions

The parties acknowledge and agree that any warranties, representations, terms, and conditions supplied by the Customer (whether included in a purchase order or any other document) not recorded in these Sales Terms will be of no legal effect and will not constitute part of this

Contract (even if a document containing such items is signed by any of the Supplier's personnel).

2.3. Variation of Contract

The parties may agree to vary the terms of the Contract by recording their agreement to do so in writing. However, any such variation will only be binding on the Supplier if signed by a director or authorised representative of the Supplier.

3. Price and Price Variation

3.1. Price

Subject to the terms of this clause 3, the Price specified in the quotation is payable in accordance with the terms for payment of the Price (including any Deposit and progress payment, if applicable) specified in the quotation provided by the Supplier.

3.2. Additional costs not included in the Price

- (a) Subject to any specific terms and conditions contained in the Contract, the Price does not include the following additional costs:
 - (i) the actual cost to the Supplier of delivery of the Goods (**Delivery**) to the premises to which the Goods are to be delivered in accordance with this Contract (**Supply Address**);
 - (ii) the actual cost to the Supplier of packaging and loading the Goods; and
 - (iii) any other cost or amount that the Supplier is required to pay, or which becomes payable, in respect of any taxes, duties or imposts of any kind imposed on the sale of the Goods or Services.
- (b) Such additional costs will be costs payable by the Customer.

3.3. Variations to Price due to changes requested by Customer

- (a) The Customer acknowledges that, if the Customer requests any variation to the Goods or Services (as applicable) to be supplied, including as to:
 - (i) the circumstances in which the Services would normally be performed;
 - (ii) the specifications of the Goods;
 - (iii) the timing or order of the provision of the Services; or
 - (iv) the scope of the Services or any other variation in the Goods or Services (as applicable) to be supplied or delivered,

the Supplier has an absolute discretion to accept or reject the requested variation and acceptance may be subject to such conditions as the Supplier may determine in its absolute discretion, including an increase to the Price or a revised schedule for (as applicable) Delivery or performance of the Services.

- (b) In order for any variation requested by the Customer under this clause 3.3 to become binding on the Supplier, the Supplier and the Customer must agree in writing on the terms of

the variation, including any variation to the Price. If agreement cannot be reached or the Supplier rejects the request for variation, these Sale Terms will continue to apply without variation.

4. GST

4.1. Application of GST Act

Terms defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning in this clause 4. Unless expressly included the consideration for any Supply under or in connection with these Sales Terms does not include GST.

4.2. Payment of GST

To the extent that any Supply made under or in connection with these Sales Terms is a Taxable Supply (as defined under the GST Act), 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) of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply. The recovery of any amount in respect of GST by the Supplier under these Sales Terms is subject to the issuing of a Tax Invoice.

5. Delivery and Passing of Risk

5.1. Passing of risk

The risk of any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (including legal costs on a solicitor and own client basis) (**Loss**) to Goods will pass to the Customer on Delivery, which occurs on the earlier of:

- (a) collection of the Goods by the Customer;
- (b) Delivery to the Customer at the Supply Address;
- (c) Delivery by the Supplier to a carrier nominated by the Customer or arranged by the Supplier for the purpose of delivering Goods to the Customer at the Supply Address; or
- (d) if the Customer and the Supplier enter into any arrangement for the storage of the Goods on the Supplier's premises, then on the date on which the storage arrangement commences.

5.2. Delay

- (a) Time is not of the essence of the date of Delivery or the performances of the Services by the Supplier and the Customer acknowledges that delays may occur. The Supplier agrees to take reasonable steps to inform the Customer of delays prior to any estimated date of Delivery or performance.
- (b) To the extent permitted by law:
 - (i) the Supplier is not liable for any failure of Delivery or to perform the Services, including by any date agreed in writing by the Supplier as the expected date for the Delivery or performance of the Services, or for delay in the Delivery or performance of the Services occasioned by any cause whatsoever, whether or not it is beyond the control of the Supplier; and
 - (ii) the Customer is not entitled to terminate the Contract or reject Goods on the basis of delayed Delivery or performance of Services,

unless the Contract is deemed a 'Small Business Contract', or a 'Consumer Contract' as defined in the Australian Consumer Law, and the delay is unreasonable, taking into account:

- (iii) that time is not of the essence of the date of Delivery or the performances of the Services by the Supplier;
- (iv) the causes of the delay and whether they were reasonably within the control of the Supplier including a delay caused by the manufacturer of the Goods;
- (v) updates provided by the Supplier about the delay, and
- (vi) any agreements between the Supplier and the Customer to extend the time for Delivery.

5.3. Customer failure to accept or collect Goods

If, by the Delivery date (specified on the quotation) or on another date specified by the Supplier, acting reasonably and provided in a written notice given to the Customer (**Handover Date**), the Customer or its agent or nominee, fails to accept Delivery, or fails to collect the Goods, then:

- (a) the Supplier may retain the Deposit (if any); and
- (b) the Supplier may without further notice to the Customer, take steps to sell or otherwise dispose of the Goods to a third party; and
- (c) the Customer must indemnify and is liable to pay to the Supplier upon demand, for any costs or expenses reasonably incurred by the Supplier in connection with the failure to collect or accept Delivery, including:
 - (i) Holding Costs (as defined in 5.4 below);
 - (ii) the costs of selling or otherwise disposing of the Goods and any difference between the sale proceeds and any money owed by the Customer to the Supplier in connection with the Goods; and
 - (iii) freight costs associated with the Delivery.

5.4. Holding Costs

Should the Goods not be collected from the Supplier, or the Customer delays Delivery by way of written notice, the Customer may be charged reasonable Holding Costs which include:

- (a) storage costs;
- (b) insurance fees;
- (c) administration fees; and
- (d) any interest on working capital incurred or payable by the Supplier in connection with the Goods from the Delivery Date.

6. Service Terms

6.1. Customer Works

Where, prior to both risk and title in the Goods passing to the Customer, the Supplier has agreed to allow any services or works to be performed on, or in relation to, any of the Goods by:

- (a) the Customer; or
- (b) by other persons or parties approved, authorised or appointed by the Customer (even if such third

parties were introduced or recommended by the Supplier),

including, without limitation, attachments, design, construction, manufacturing, documentation, resources, validation, project management and/or resource coordination (**Customer Works**), and whether or not the Customer Works are subject to review by the Supplier, then the Supplier acknowledges and agrees that:

- (i) those works are performed by the Customer or a third party, not by the Supplier; and
- (ii) the Supplier has no control over the Customer Works,
- (c) the Supplier acknowledges and agrees that the Supplier and its personnel are not liable to the Customer in respect of the accuracy, correctness or suitability of the Customer Works or any Loss incurred by the Customer Works in connection with the Customer Works (including any damage or reduction in performance the Customer Works may cause to the Goods);
- (d) the Customer indemnifies the Supplier from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the Customer Works that are suffered or incurred by the Supplier, including as a result of or arising from or, relating to any delay or failure to perform the Customer Works or in the Supplier having to rectify, remedy or make-good the Customer Works; and
- (e) the Customer acknowledges that any Customer Works may void any warranty outlined in clause 13.

6.2. Supplier personnel providing Services not liable

Where any of the Services involve the Supplier providing or making available personnel who:

- (a) will work either in whole or in part at premises owned, leased, controlled, or occupied by the Customer or a subcontractor or agent of the Customer; and
- (b) are subject to the direction of the Customer or a subcontractor of the Customer as to the performance of their duties,

the Supplier is not liable to the Customer, and the Customer indemnifies the Supplier against, all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to any acts or omissions of such personnel while they are so engaged.

7. Information and Access

- (a) The Customer must provide the Supplier, in a timely manner, with all necessary information, documents or other particulars and make the necessary arrangements for any access, approvals and permits, equipment and facilities that the Supplier may reasonably require for the Delivery or performance of the Services.
- (b) Where the Services are to be performed other than at the premises of the Supplier, the Customer must ensure the provision of a safe working environment in accordance with all applicable legislation. The Customer must also indemnify and

keep indemnified the Supplier in respect of all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or in relation to occupational health and safety issues in connection with the performance of the Services at such premises and ensure that appropriate permits and insurances are in place.

8. Retention of Title in Respect of Goods

8.1. Supplier's retention of title until payment made in full

Notwithstanding that risk in Goods may have passed pursuant to clause 5, title to and ownership of the Goods remains with the Supplier until such time as all amounts owing by the Customer with respect to those Goods have been paid in full. The Customer acknowledges that until such time as title to and ownership of the Goods passes to the Customer, the Customer is in possession of the Goods for and on behalf of the Supplier as bailee.

8.2. Licence to enter premises and seize Goods for which title has not passed

Without limiting any other rights of the Supplier at law (including any seizure rights under the PPS Act (as defined below)), the Customer grants to the Supplier an irrevocable licence to enter any of the Customer's premises, exercisable upon a Termination Event (as defined in clause 23). This licence to enter permits the Supplier by its officers, employees, servants, agents, representatives, or invitees, at its sole option to enter the Customer's premises and seize, repossess, and remove all Goods on the premises for which title has not passed to the Customer. The Customer consents to such actions and agrees that the Supplier will not be liable for any Loss suffered by the Customer as a result of the Supplier taking such actions, other than where the relevant Loss was due to wilful misconduct.

8.3. Storage of Goods until title passes

Until such time as title to and ownership of the Goods passes to the Customer in accordance with this clause 8, the Customer must store those Goods separately and in such a manner that they are clearly identified as the property of the Supplier and must not, without the written consent of the Supplier:

- (a) grant or register or permit to be granted or registered any security interest (as defined in the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) (**Security Interest**) over any of the Goods in favour of another person which ranks in priority to the Supplier's Security Interest in the Goods;
- (b) affix the Goods to any item of real or personal property; or
- (c) sell or dispose or give possession or control of the Goods to another person.

9. Invoicing and Payment for Goods and Services

9.1. Invoicing and payment

The Supplier will invoice the Customer for Goods and/or Services supplied under the Contract (**Invoice**). The Invoice will set out (amongst other things) the Price, any additional costs as outlined in the Contract, and the quantity of Goods and/or Services supplied. The Customer must pay the Price for the Goods and/or Services supplied to the Customer:

- (a) within the period specified in the Contract or, if no period is specified, cash ex works (in respect of Goods) or cash on delivery in respect of Services unless otherwise specified in Credit Terms;
- (b) in cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Supplier or in any other way that the Supplier directs in writing to the Customer; and
- (c) without any abatement, reduction or set-off by the Customer.

9.2. Interest

If payment is not made by the Customer by the due date, the Supplier may charge interest on the amount outstanding, which will accrue interest from the first day after the due date until payment is made in full. Interest will be calculated on a daily basis with an interest rate equal to the Westpac indicator or benchmark rate as published in the Australian Financial Review on the date when the relevant amount is due for payment (or any other equivalent benchmark rate selected by the Supplier in its absolute discretion) plus 2%.

10. Trade-in

- (a) If specified in the Contract, payment for the Goods may be made in whole or in part by the Customer by way of trade-in equipment, including all accessories and attachments. The Customer warrants that any trade-in equipment, including all accessories and attachments, is owned by it free from all Security Interests or other encumbrances.
- (b) If the value of the trade-in equipment is specified in the Contract after an inspection of the trade-in equipment by the Supplier, then acceptance of the trade-in remains subject to the trade-in equipment being in essentially the same condition on the day that the trade-in equipment is delivered to the Supplier as on the date of the inspection.
- (c) If the value of the trade-in equipment is specified in the Contract without any prior inspection of the trade-in equipment by the Supplier or no value for the trade-in equipment is specified, the Supplier will determine the final value of the trade-in equipment when the trade-in equipment is delivered to the Supplier.
- (d) In order to complete the trade-in, the Customer must (if it agrees with the trade-in value specified by the Supplier) provide the Supplier with a valid tax invoice and such specifications, plans and operating or maintenance manuals (or similar documents) relating to the trade-in equipment as are in the Customer's possession or control.
- (e) For clarity, rejection of a trade-in value by the Customer does not relieve the Customer of its obligations under the Contract, nor may the Customer terminate the Contract in response to any failure of the parties to agree on a trade-in value.

11. Scheduled Oil Sampling

11.1. Customer registration in oil sampling program

If specified in the Contract that 'Scheduled Oil Sampling' will be provided in respect of the Goods, then the Customer acknowledges that it will be registered with

the Supplier as a participant in its scheduled oil sampling program in respect of the Goods and consents to that registration.

11.2. Oil sampling to be undertaken by Supplier

The Customer also acknowledges that oil sampling will be undertaken by the Supplier for the purposes of this program after the first 250 hours of operation for the Goods and, thereafter, in accordance with the applicable operations and maintenance manuals or guides. The Customer agrees to cooperate reasonably with the Supplier in order to allow this oil sampling to be undertaken.

11.3. Supplier to provide written report

Within a reasonable time after completion of each instance of oil sampling, the Supplier will provide the Customer with a written report of the results of that oil sampling. The report is intended to assist with predicting mechanical wear, however the Customer acknowledges that, to the extent permitted by law, the Supplier gives no guarantee or warranty in respect of any component failure or mechanical breakdown by conducting oil sampling or providing a report of the results to the Customer.

11.4. Supplier limits its liability

Notwithstanding anything else in these Sales Terms, the Supplier limits its liability for a breach of a condition or warranty in respect of the supply of these oil sampling services to:

- (a) supplying the oil sampling again; or
- (b) the payment of the costs of having the oil sampling services supplied again,

whichever the Supplier may elect.

11.5. Customer to purchase sampling kits and obtain samples

The Customer is responsible for purchasing the sampling kits and obtaining the oil sample.

12. Indemnity

12.1. Indemnity by the Customer

To the maximum extent permitted by law, the Customer indemnifies the Supplier against any Loss suffered or incurred by the Supplier in respect of:

- (a) death or personal injury to any person;
- (b) damage to, or destruction or loss of, any property, arising in connection with:
- (c) a breach of the Contract by the Customer;
- (d) the negligence, unlawful conduct, or breach of a statutory duty of the Customer or its officers, employees, contractors, or agents; or
- (e) a breach of equitable duty.

12.2. Proportionate reduction in Customer's liability

Any liability of the Customer to indemnify the Supplier under this clause 12 shall be reduced proportionally to the extent that the Supplier caused or contributed to the:

- (a) death personal injury to any person; or
- (b) damage to, or destruction or loss of any property.

12.3. Supplier's right to enforce indemnity

The Supplier need not incur any cost or make any payment before enforcing any right of indemnity under this clause 12.

12.4. Indemnity a continuing obligation

This indemnity is a continuing obligation and remains separate and independent from the other obligations of the parties and survives the termination of the Contract for whatever reason and continues in full force and effect.

13. Goods Warranties

13.1. Manufacturer warranties

(a) Goods are supplied in accordance with the manufacturer's specific warranty (if any). The applicable manufacturer's warranty statements are those referred to in the Contract. Copies of these warranty statements are available by request.

(b) To the maximum extent permitted by law, and unless otherwise agreed in writing, the Supplier's sole responsibility with respect to those manufacturer warranties is to pass on to the Customer the benefit of the manufacturer's specific warranty (if any).

13.2. Other warranties for new Goods

The Supplier warrants that the Goods (where they are new and not used) are of acceptable quality however, without limiting clause 16, the Supplier does not give any additional warranties to the Customer in respect of Goods. The Supplier may offer a specific warranty in relation to specific Goods, however, the application of any such specific warranties must be confirmed in writing and signed by an authorised officer of the Supplier. Any applicable warranty statements are those specifically referred to in the Contract and copies of these statements are available upon request.

13.3. Used Goods

Used Goods are sold in an 'as is, where is' condition and may contain defects or not operate properly. Subject to clause 16, no warranty of any kind is expressly or impliedly given by the Supplier in relation to used Goods.

13.4. General guidance not to be relied on

Subject to clause 16, the Customer acknowledges that any representations made by or on behalf of the Supplier regarding performance, operating costs and applications contained in the Contract, or in any other communication prepared by the Supplier or its suppliers, including Caterpillar Inc., are intended as general guidance only and should not be relied on by the Customer.

14. Service Standards and Warranties

(a) For a 12-month period following the date of completion of any Services and in accordance with any Services related warranty statement provided to the Customer by the Supplier, the Supplier warrants that the Services were carried out and completed with reasonable skill and care, and in accordance with all relevant laws.

(b) Any parts supplied by the Supplier in carrying out the Services are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the manufacturer's warranty statements are available on request.

(c) To the maximum extent permitted by law, and unless otherwise agreed in writing, the Supplier's sole responsibility with respect to those manufacturer warranties relating to such parts is to pass on to

the Customer the benefit of the manufacturer's specific warranty (if any).

15. Exclusions

To the extent permitted by law and subject to these Sales Terms (including clauses 13, 14 and 16):

- (a) the Supplier excludes any other express or implied warranties, guarantees and conditions; and
- (b) the Supplier is not liable to the Customer for any:
 - (i) loss of production;
 - (ii) loss of actual or anticipated profit;
 - (iii) loss of overhead;
 - (iv) loss of contract;
 - (v) loss of revenue;
 - (vi) loss of opportunity; or
 - (vii) any consequential, indirect, or special loss, damage or injury of any kind whatsoever (but not including any loss or damage which arises naturally (according to the usual course of things) from the relevant event),

howsoever caused, including due to the negligence of the Supplier, or arising directly or indirectly in connection with any Goods or Services or any defect.

16. Limitation of Liability

- (a) Nothing in the Contract excludes, restricts, or modifies any rights which the Customer may have under the Australian Consumer Law or otherwise which may not be excluded, restricted or modified at law or by agreement.
- (b) To the extent permitted by law, unless the Goods or Services (as applicable) are goods of a kind ordinarily acquired for personal, household or domestic use or consumption, a failure of the Supplier to comply with a statutory guarantee under the Australian Consumer Law (other than a guarantee under section 51, 52 or 53 which may not be excluded, restricted or modified by agreement) is limited to one or more of the following:

- (i) for a supply of Goods:
 - A. the replacement of the Goods or the supply of equivalent goods;
 - B. the repair of the Goods;
 - C. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - D. the payment of the cost of having the Goods repaired; and
- (ii) for a supply of Services:
 - A. the supplying of the Services again; or
 - B. the payment of the cost of having the Services supplied again.

- (c) The limitation of liability in this clause 16 also applies to a Customer that is not a "consumer" (as defined in section 3 of the Australian Consumer Law) or which the statutory guarantees do not apply, as if that person was a consumer to which the statutory guarantees applied.

17. General Representations and Warranties

17.1. Supplier's reliance on Customer's representations and warranties

The Customer acknowledges that the Supplier is relying on the representations and warranties made to it by the Customer or its agents, employees or representatives in connection with the provision of Goods and Services and these Sales Terms.

17.2. Customer representations and warranties

The Customer represents and warrants to the Supplier 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) it has taken all necessary action to authorise the execution, delivery, and performance of the Contract, in accordance with its terms;
- (c) it has power to enter into and perform its obligations under the Contract and to carry out the transactions contemplated by the Contract;
- (d) its obligations under the Contract 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;
- (e) the execution, delivery and performance of the Contract 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;
- (f) 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 Contract;
- (g) an Insolvency Event has not occurred in relation to it; and
- (h) unless expressly stated, it does not enter into the Contract as a trustee.

17.3. Definition of Insolvency Event

In these Sales Terms, an Insolvency Event means where the Customer:

- (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 Customer; or
- (d) has a winding-up or bankruptcy order made against it or passes a resolution for winding-up or bankruptcy.

18. Confidentiality

18.1. Confidential Information

Subject to the exceptions set out in this clause 18, the Customer must keep secret and confidential, and must not divulge or disclose, any of the Supplier's confidential information, trade secrets, know how, scientific, technical, product, market or pricing information relating to the Supplier's business or the Contract (**Confidential Information**).

18.2. Customer to ensure information disclosed remains confidential

The Customer must take all reasonable steps to ensure that any person to whom it discloses the Supplier's Confidential Information under the Contract does not make public, or disclose, the Confidential Information.

18.3. Permitted disclosure

The restrictions in this clause 18 do not apply where the relevant Confidential Information:

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

19. Privacy

- (a) The Supplier is committed to protecting the privacy of individuals and is bound by the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth).
- (b) When collecting, using, disclosing or otherwise handling a Customer's personal information, the Supplier will comply with its Privacy Policy available at <https://www.hastingsdeering.com.au/legal/privacy>.
- (c) The Customer agrees and acknowledges that the Supplier may obtain and use its personal information (as defined by the *Privacy Act 1988* (Cth)) in accordance with its Privacy Policy.

20. Security Interests

20.1. Customer grants Security Interests to Supplier

The Customer acknowledges that under these Sales Terms the Customer grants Security Interests to the Supplier including a retention of title in respect of the Goods (in accordance with clause 8). The Customer acknowledges that the Contract constitutes a security agreement within the meaning of the PPS Act.

20.2. Security Interest to attach

The Security Interests arising under these Sales Terms attach to the Goods (as applicable) when the Customer obtains possession of the Goods (as applicable) and the parties confirm that they have not agreed that any

Security Interest arises under these Sales Terms at any later time.

20.3. **Perfection of Security Interest**

The Customer acknowledges that the Supplier may, at its cost, perfect its Security Interests by lodging one or more Financing Statements (as defined in the PPS Act) in each class of collateral determined by the Supplier on the Personal Property Securities Register established under the PPS Act.

20.4. **Customer to enable Security Interest registration**

The Customer undertakes to do anything reasonably required by the Supplier to enable the Supplier to register its Security Interests, with the priority the Supplier requires, and to maintain the registration.

20.5. **Customer not to make an amendment demand**

The Customer agrees not to make an amendment demand under the PPS Act until its obligations under all Security Interests held by the Supplier have been fully satisfied.

21. **Personal Property Securities Law**

- (a) The Supplier does not need to give the Customer 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.
- (b) 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 unless section 275(7) of the PPS Act applies.
- (c) The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.
- (d) 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 in each case to the extent permitted by the PPS Act 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 Supplier to give a notice to the Customer;
 - (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 Supplier to give the Customer 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).

22. **Intellectual Property**

22.1. **Vesting of intellectual property in Supplier**

All intellectual property rights throughout the world, whether registered or unregistered, existing now or in the future, including copyright, patents, designs, trademarks, business names, domain names, know-

how, confidential information, inventions, concepts, semi-conductor and circuit layouts, trade secrets, processes, methods and other analogous rights (**Intellectual Property Rights**) subsisting in the Goods, Services and any other thing prepared or developed as part of the supply by the Supplier contemplated by the Contract (**Project IP**) vest in the Supplier upon creation.

22.2. **Supplier intellectual property**

All Intellectual Property Rights owned by the Supplier, or licensed to the Supplier by a third party, and which:

- (a) are in existence prior to the date of this Contract; or
- (b) came into existence other than in connection with this Contract,

are **Supplier IP** and remain, the property of the Supplier or the relevant third party.

22.3. **Customer intellectual property**

All Intellectual Property Rights owned by the Customer, or licensed to the Customer by a third party, and which:

- (a) are in existence prior to the date of this Contract; or
- (b) came into existence other than in connection with this Contract,

are **Customer IP**, and remain, the property of the Customer or the relevant third party.

22.4. **Supplier to grant licence of Project IP and Supplier IP in respect of Goods**

In respect of Goods, the Supplier, subject to any restrictions imposed by the relevant manufacturer's warranty, grants the Customer a royalty-free, non-exclusive, revocable licence to use and copy the Project IP and the Supplier IP for the sole purposes of the Customer operating, maintaining, and repairing the Goods.

22.5. **Supplier to grant licence of Project IP in respect of Services**

In respect of Services, upon completion and receipt of payment in full by the Supplier for the Services (in accordance with the terms of this Contract), the Customer is granted a royalty-free, non-exclusive, and revocable licence to use the Project IP created or developed by the Supplier in respect of the Services for the purpose as expressly set out or otherwise contemplated by the Contract.

22.6. **Return and deletion of Project IP in the event of early termination**

In the event of early termination of the Contract, any Project IP (or copies thereof) shall be returned forthwith by the Customer to the Supplier and all electronic copies held by the Customer must be deleted.

23. **Termination**

23.1. **Termination Event**

It is a Termination Event if:

- (a) the Customer makes any false or misleading representation in respect of the Goods or Services;
- (b) the Customer commits a breach of the Contract that is capable of remedy and the Customer fails to remedy that breach within 14 days of a notice from the Supplier to remedy the breach;

- (c) the Customer commits a material breach of the Contract that is not capable of remedy;
- (d) an Insolvency Event occurs with respect to the Customer (however only to the extent that the relevant Insolvency Event permits termination at law); or
- (e) a change in control of the Customer occurs without the prior written consent of the Supplier.

23.2. **Supplier's rights upon Termination Event**

If a Termination Event occurs, the Supplier may (without prejudice to any other right or remedy under the Contract or at law) do any one or more of the following by notice to the Customer:

- (a) demand payment of all amounts actually or contingently owing by the Customer to the Supplier (including for any Services performed but not already paid for);
- (b) refuse to supply any additional Goods or Services to the Customer;
- (c) terminate the Contract; and
- (d) seize and repossess any Goods for which title has not passed to the Customer.

23.3. **Customer's right to terminate Contract**

Without limiting any rights of the Customer to terminate at law, if:

- (a) the Supplier commits a material breach of the Contract that is not capable of remedy; or
- (b) an Insolvency Event occurs with respect to the Customer (however only to the extent that the relevant Insolvency Event permits termination at law),

then the Customer may, by notice to the Supplier, terminate the Contract.

23.4. **Termination Indemnity**

- (a) Except to the extent expressly permitted by the Contract and subject to clauses 5, 16 and 23.3, the Customer has no right to Terminate the supply of Goods or Services contemplated by the Contract.
- (b) If the Customer nevertheless purports to Terminate such a supply then, in addition to any other rights that the Supplier may have under the Contract (including these Sales Terms) or at law (including for repudiation), the Customer indemnifies the Supplier against any Loss incurred by the Supplier arising from the purported Termination, except to the extent the relevant Loss was caused, or contributed to, by the Supplier.
- (c) The Supplier need not incur any cost or make any payment before enforcing any right of indemnity under this clause 23.4.
- (d) This indemnity is a continuing obligation and remains separate and independent from the other obligations of the parties and survives the termination of the Contract for whatever reason and continues in full force and effect.

24. **Notices**

All notices and other documents given or required to be given pursuant to this Contract must:

- (a) be in writing and in clear legible English;

- (b) signed by a person duly authorised by the sender; and
- (c) be delivered by prepaid post, by hand, by email or by facsimile to the party to whom the notice is addressed at its address shown in this Contract, as applicable, or such other address as it may have notified to the other party.

25. **Authorisation**

Any person executing the Contract on behalf of the Customer as an authorised representative declares that he or she is duly authorised to execute this document and agree to the terms of the Contract on behalf of the Customer and is not aware of any fact or circumstance that might affect his or her authority to do so.

26. **General**

26.1. **Assignment**

The Supplier may transfer, assign, novate or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Customer. The Customer's rights and obligations arising out of or under the Contract are not assignable by the Customer without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

26.2. **Further Assurances**

Each party must promptly do whatever any other party reasonably requires of it to give effect to the Contract and to perform its obligations under it.

26.3. **Waiver**

A single or partial exercise or waiver by a party of a right relating to the Contract does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

26.4. **Relationship between the parties**

These Sales Terms are not intended to create a partnership, joint venture or agency relationship between the parties. 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 that provision in any other jurisdiction or the remaining provisions in that or any other jurisdiction. 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.

27. **Governing Law**

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.

28. **Interpretation**

In these Sales Terms:

- (a) The singular includes the plural and the plural includes the singular.
- (b) The word 'includes' in any form is not a word of limitation.
- (c) Words of any gender include all genders.

- (d) Other parts of speech and grammatical forms of a word or phrase defined in these Sales Terms have a corresponding meaning.
- (e) 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.
- (f) 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.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements, or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A promise on the part of two or more persons binds them jointly and severally.
- (k) 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.
- (l) A reference to dollars or \$ is a reference to the lawful currency of Commonwealth of Australia unless expressly stated to the contrary.
- (m) 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.