

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 either accept the quote or send a Purchase Order to the Company.
- (b) Each such signed quote or Purchase Order forms an agreement between the parties comprised of the quote or Purchase Order and the terms of the Credit Application (if the Applicant has a trade credit account) are incorporated by reference in them.
- (c) The parties may enter into more than one Agreement and the details in each quote or Purchase Order only apply to the Goods or Services to be provided under that quote or Purchase Order.

1.2 **Priority**

To the extent of any inconsistency between any of the terms of the Credit Application (if the Applicant has a trade credit account) 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, NZBN.

1.4 **Variation of Quote or Purchase Orders**

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

2. **PRICE**

2.1 **Price**

Unless otherwise agreed in writing, all freight, insurance, delivery and travel charges will be additional to any price quoted. The Company may withdraw any quotation before it is accepted and, in any event, any quotation will lapse without notice 30 days after it is given.

2.2 **GST**

- (a) Words used in this clause 2.2 which have a defined meaning under the GST Act have the same meaning as in the GST Act unless the context indicates otherwise.
- (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 (additional 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. The recipient will pay the additional amount at the same time as the consideration to which it is referable.
- (d) Where a Taxable Supply (or the consideration payable for a Taxable Supply) is cancelled or varied as described in section 25(1) of the GST Act, the Company shall issue the Applicant a credit note or debit note (as those terms are defined under the GST Act) as applicable.

3. **GOODS DELIVERY AND PASSING OF RISK**

- (a) Delivery occurs and risk of Loss to the 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 any delay in Delivery occasioned by any cause whatsoever, whether or not such cause is 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 (including for any Loss).

- (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 these Sales Terms and to the extent of any inconsistency between any of these Sales Terms and the terms of any Service Workshop Costing, the terms of these Sales Terms 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 have been paid in full.
- (c) If the Applicant fails or refuses to pay the amount due to the Company, the Applicant authorises the Company to sell the Serviced Equipment by public auction or private sale without any further authorisation by the Applicant, and on reasonable written notice (of not less than three (3) months) to the Applicant of the proposed sale. The Applicant authorises the Company to satisfy all amounts due to the Company by the Applicant and the costs of storage, transport, auction and sale from the proceeds of the sale.
- (d) 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.
- (e) 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 (or paid) 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 or in accordance with clause 3 (**Payment Terms**) of the Credit Terms (where the customer has a trade credit account); or
- (b) in any other way that the Company directs in writing to the Applicant.

6.3 **Progress Payments**

Unless otherwise agreed in writing, all payments for Equipment purchases shall be made before the delivery of the Equipment and non-refundable deposit requirements may apply at the time of quote acceptance. In addition, the Company may at any time request that the Applicant make one or more upfront or progress payments in respect of Other Goods or Services and the Applicant agrees to comply with any such request.

7. **GOODS CREDIT RETURN POLICY**

Except as otherwise set out in these Sales Terms, the Applicant is not entitled to cancel Purchase Orders received by the Company and any rights to return Goods are expressly set out in this clause 7. Credit will be given to the Applicant only for parts returned by the Applicant in accordance with the Company's Parts Return Policy available at <https://www.terracat.co.nz/legal>.

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 (but is not obliged to) offer a specific warranty in relation to specific Goods and the Company will notify the Applicant when a specific warranty relating to such Goods applies. 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 and Loss (including Consequential Loss), whether arising from breach of contract, tort (including negligence) or otherwise, under or 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 to the Applicant or any third party for any Loss (including Consequential Loss) or any indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from the Goods and Services or any defect in the relevant Goods and Services; 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;
 - (iii) the cost of having the Goods repaired; or
 - (iv) if the Company did not charge for the defective or damaged Goods or the relevant Service, paying you your recoverable direct loss up to a maximum of \$5,000., 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 Consumer Guarantees Act 1993 or the Fair Trading Act 1986 or otherwise which may not be excluded, restricted or modified by agreement.
- (e) In the event of a short delivery or errors in dispatch which would be apparent by inspection on delivery, the Company will accept no liability unless notified by the Applicant in writing within three days of delivery.
- (f) The Applicant may not make or pursue any claim against the Company in relation to the provision of any Goods or Services unless the Applicant has given the Company written notice of the claim (including full particulars of the grounds on which the claim is based) within:
 - (i) 1 year of the relevant Good or Service being supplied; or
 - (ii) if the claim relates to a breach of a written warranty expressed for a defined period, that defined period.

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 INFORMATION

- (a) The Company may collect, use and disclose personal information about the Applicant's Personnel that are involved in connection with the Goods and/or Services. Such information is collected for the purposes of administering these Sales Terms, determining credit worthiness, receiving and using the Goods and/or Services, protecting the Company's lawful interests, investigating and dealing with suspected fraud or unlawful activity, third party acquisitions of any interest in the Company's business, communicating promotional activities and product information, for debt collection purposes, administrative purposes including research, planning, service development, security and risk management and for any other related purpose.
- (b) The Company may disclose personal information to its Related Companies, advisers and representatives, regulatory authorities and service providers for the above purposes (or any directly related purpose).
- (c) Individuals who supply personal information to the Company in connection with these Sales Terms may contact the Company to make a request to access or correct any personal information the Company holds about them.
- (d) The Applicant warrants that all Applicant Personnel that are involved in connection with the Goods and/or Services under these Sales Terms have been made aware of this clause 12 and have authorised personal information being collected and handled by the Company on the above basis.
- (e) To the extent that the Applicant collects, uses or otherwise processes any personal information in connection with the provision of the Goods and/or Services, the Applicant agrees and warrants that it will:
 - (i) comply with all applicable privacy and data protection Law (as such laws apply to the Applicant and to the Company), and cooperate with the Company to ensure that the Company can comply with all such applicable Law;
 - (ii) protect all such personal information with reasonable security safeguards at all times;
 - (iii) immediately notify the Company of any unauthorised or accidental access to, or disclosure, alteration, loss or destruction of, or any loss of access to, any such personal information; and
- (f) comply with any other lawful instructions of the Company in relation to the collection, use or other processing of such personal information.

13. 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 PPSA) on the Personal Property Securities Register established under the PPSA.
- (e) The Applicant undertakes to do anything reasonably required by the Company to enable the Company to perfect and register its Security Interests, with the priority the Company requires, including if applicable, to register a purchase money security interest on the Personal Property Securities Register, 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 PPSA) 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 Applicant acknowledges receipt of a copy of these Sales Terms and waives any right it may have to receive from the Company a copy of any Financing Statement, Verification Statement or Financing Change Statement that is registered, issued or received in relation to any Goods supplied under these Sales Terms. The Applicant shall immediately notify the Company in writing of any change of name of the Applicant.
- (h) To the extent that part 9 of the PPSA applies to any Security Interests created under these Sales Terms, the Applicant agrees that sections 114(1)(a), 133 and 134 of the PPSA will not apply on the enforcement by the Company of its rights in respect of any such Security Interest. The Applicant also waives any rights it may have under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA on such enforcement.
- (i) Words used in this clause 5.3 which have a defined meaning under the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

14. 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.

15. 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\(d\)](#).

16. ANTI-CORRUPTION

The Applicant represents and warrants that it will not, either directly or indirectly, promise, offer, give or receive anything of value, bribe or an improper advantage (whether financial or otherwise) to any individual employee, agent or representative of the Company or the Company's Related Companies (which includes but is not limited to Sime Darby) as an inducement, incentive, reward, gift or bonus for any purpose connected with the business transaction or the purchase order contrary to applicable anti-corruption law.

17. GENERAL

17.1 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.

17.2 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.

17.3 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.

17.4 Relationship between the parties

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

17.5 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.
- (b) 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.

17.6 DISPUTES

- (a) In the event of a dispute, either party may deliver 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 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, but subject to clause 17.6(f), the parties will continue to perform their obligations under the purchase order (including any obligations to make a payment).
- (f) Where the Notice of Dispute is in relation to an interpretation of a specification, inclusion or quoted amount for Goods and Services, the Company is not required to perform the Goods and Services until the dispute is resolved.
- (g) Neither party may commence proceedings in court in relation to a dispute unless the party has complied with this clause 17.6 or are seeking equitable relief.

17.7 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:

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

17.8 Entire agreement

These Sales Terms replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

17.9 Governing law and jurisdiction

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

18. DEFINITIONS

18.1 Defined Terms

In these Sales Terms:

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

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 Terra Industrial New Zealand Limited NZBN 9429 031 996 396.

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

Consequential Loss means any indirect or consequential loss including actual or anticipated profits, loss of overheads, unrecovered overheads, loss of opportunity, loss of contract or loss of revenue.

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.

Equipment means construction, mining, forestry, and agricultural machinery. **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 the *Goods and Services Tax Act 1985*.

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](#).

Law means all laws, regulations, standards, codes of practice, proclamations, by-laws, directives, orders or other form of rule-making of any Governmental Agency, or equity and any binding court order or judgement relevant to the provision of the Goods and/or Services, or the Company.

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 Companies. **PPSA** means the *Personal Property Securities Act 1999*.

Purchase Order means an order to purchase Goods or Services pursuant to clause 1 and includes an electronic request made on the Company's website (parts.cat.com/en/terra) to purchase Goods or Services.

Price means:

- (a) for Goods and Services on the Company's website (parts.cat.com/en/terra) the price stated on the website for the Goods or Services at the time of order; and
- (b) for Goods and Services made by any other means, as specified by the Company in a quote or proposal document.

Progress Payment means that portion of the Price, if any, payable in accordance with clause [6.3](#).

Related Company has the meaning given to that term in the *Companies Act 1993*.

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 PPSA.

Security Interest means a security interest within the meaning of the PPSA.

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 means a supply within the meaning of the GST Act.

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

Taxable Supply means a taxable supply within the meaning of the GST Act.

Termination Event has the meaning set out in clause [14](#).

Verification Statement means a verification statement within the meaning of the PPSA.

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 New Zealand 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.