# Hastings Deering (PNG) Limited Registration Number 1 - 16996

# Sales Terms for Service Customers

## PART A - Terms applying to Work Authorisations

### 1. Formation of Service Agreement

(a) Where the Customer wishes to acquire Services from the Company:

(i) the Company will issue a Work Authorisation to the Customer; and

(ii) within 30 days of receipt of the Work Authorisation, the Customer will issue a Purchase Order (as defined in the Work Authorisation) to the Company as an offer to purchase the Goods and Services described in the Work Authorisation.

(b) If the Purchase Order is accepted by the Company, an agreement between the parties is formed, comprising of the Purchase Order and Part A and Part D of these Sales Terms (the **Service Agreement**).

(c) If a Customer has not made an offer to purchase the Services within 30 days from the date of the Work Authorisation being provided by the Company, then the Company may charge a rental fee to the Customer for the physical space occupied by the Serviced Equipment, based on the working value of the workshop area occupied. The Customer 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 Work Authorisation is received by the Company.

### 2. Performance of Services

(a) The Price estimate contained in the Work Authorisation relevant to the Service Agreement:

(i) is an estimate only and may have been prepared by a visual inspection of the Serviced Equipment; 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 Work Authorisation, and any changes to such matters either before acceptance or during progress of the Services are payable by the Customer in addition to the Price estimate set out in the Work Authorisation.

(b) The Customer 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 Work Authorisation, the Company may, in its absolute discretion, cease providing the Services and request that the Customer accept a revised Work Authorisation in respect of the Services. The Customer acknowledges and agrees that it must make payment for any Services performed by the Company prior to the issuance of the revised Work Authorisation.

(c) Where the Customer accepts the Company's revised Work Authorisation, the revised Work Authorisation will be deemed to be the Purchase Order for the purposes of the Service Agreement.

(d) Where the Customer does not accept the Company's revised Work Authorisation, then:

(i) the Company will continue to provide the Services as set out in the original Work Authorisation, if it is safe to do so; and

(ii) the Customer releases the Company from, and will indemnify, keep indemnified and hold harmless the Company in respect of all claims arising in connection with the Customer's decision not to undertake the additional work or purchase the additional parts or other materials.

## PART B - Terms applying to Quotes

### 3. Formation of Service Agreement

(a) Where the Customer wishes to acquire Services from the Company:

(i) the Company will issue a Quote to the Customer; and

(ii) within 30 days of receipt of the Quote, the Customer will issue a Purchase Order (as defined in the Quote) to the Company as an offer to purchase the Goods and Services described in the Quote.

(b) If the Purchase Order is accepted by the Company, an agreement between the parties is formed, comprising of the Purchase Order and Part B and Part D of these Sales Terms (the **Service Agreement**).

(c) If a Customer has not made an offer to purchase the Services within 30 days from the date of a Quote being provided by the Company, then the Company may charge a rental fee to the Customer for the physical space occupied by the Serviced Equipment, based on the working value of the workshop area occupied. The Customer 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 Quote is received by the Company.

### 4. Performance of Services

(a) The Price contained in the Quote relevant to the Service Agreement is fixed for the scope of Goods and Services expressly set out in the Quote.

(b) The Customer 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 Quote, the Company may, in its absolute discretion, cease providing the Services and request that the Customer accept a revised Quote in respect of the Services. The Customer acknowledges and agrees that it must make payment for any Services performed by the Company prior to the issuance of the revised Quote.

(c) Where the Customer accepts the Company's revised Quote, the revised Quote will be deemed to be the Purchase Order for the purposes of the Service Agreement.

(d) Where the Customer does not accept the Company's revised Quote, then:

(i) the Company will continue to provide the Services as set out in the original Quote, if it is safe to do so; and

(ii) the Customer releases the Company from, and will indemnify, keep indemnified and hold harmless the Company in respect of all claims arising in connection with the Customer's decision not to undertake the additional work or purchase the additional parts or other materials.

## PART C – Terms applying to Preventative Maintenance Services

### 5. Formation of Service Agreement

(a) Where the Customer wishes to acquire Services from the Company:

(i) the Company will issue a Maintenance Schedule to the Customer setting out a proposed preventative maintenance programme; and

(ii) within 30 days of receipt of the Maintenance Schedule, the Customer will issue a Purchase Order (as defined in the Maintenance Schedule) to the Company as an offer to purchase the Goods and Services described in the Maintenance Schedule.

(b) If the Purchase Order is accepted by the Company, an agreement between the parties is formed, comprising of the Purchase Order and Part C and Part D of these Sales Terms (the **Service Agreement**).

### 6. Performance of Services

(a) The Customer acknowledges that the Prices contained in the Maintenance Schedule relevant to the Service Agreement are estimates only, based on the Company's assessment of the Serviced Equipment's state of repair and maintenance at the commencement of the Service Agreement.

(b) The Customer 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 Maintenance Schedule, the Company may, in its absolute discretion, cease providing the Services and request that the Customer accept a revised Maintenance Schedule in respect of the Services. The Customer acknowledges and agrees that it must make payment for any Services performed by the Company prior to the issuance of the revised Maintenance Schedule.

(c) Where the Customer accepts the Company's revised Maintenance Schedule, the revised Maintenance Schedule will be deemed to be the Purchase Order for the purposes of the Service Agreement.

(d) Where the Customer does not accept the Company's revised Maintenance Schedule, then:

(i) the Company will continue to provide the Services as set out in the original Maintenance Schedule, if it is safe to do so; and

(ii) the Customer releases the Company from, and will indemnify, keep indemnified and hold harmless the Company in respect of all claims arising in connection with the Customer's decision not to undertake the additional work or purchase the additional parts or other materials.

### 6.2 Time for Service

(a) The Customer must provide the Company with at least 14 days' notice of an upcoming service interval to allow sufficient time to schedule the Service.

(b) Before the Service can take place the parties must agree on the date and time for the Service.

(c) Each Service will be completed by the Company between standard service hours, being Monday to Friday between 6.00 am to 6.00 pm.

(d) Should the parties agreed to carry out a Service outside standard service hours, overtime allowances will be applied by the Company as additional costs and charged to the Customer separately.

(e) The Customer must ensure the Serviced Equipment is clean and available at the agreed date and time for the period required by the Company to perform the Service.

### 6.3 Location for Service

(a) The Company will provide the Service on Site unless otherwise expressly agreed in writing between the parties.

(b) The Customer must provide access to the Site and the Serviced Equipment as required by the Company for the purpose of performing the Service.

(c) To the best of its ability, the Customer must minimise any delays to, or interruption of, the Company accessing the Serviced Equipment to perform the Service.

(d) If access to the Site and/or the Serviced Equipment is delayed for more than 30 minutes, the Company reserves the right to pass on any additional costs associated with the delay to the Customer.

(e) All costs associated with additional travel such as Travel Cost (Km) and Travel Cost (Hours) will be

considered an additional cost and will be charged to the Customer separately.

(f) The Customer must provide the Company with Site inductions free of charge. If Site inductions are charged to the Company, they will be considered an additional cost and will be charged to the Customer separately.

**7. Ongoing maintenance requirements**

The Customer agrees to:

(a) perform daily and weekly inspections as detailed in the manufacturer's operation and maintenance manual supplied with the Serviced Equipment;

(b) advise the Company of any significant variances in relation to the Serviced Equipment's utilisation and application which may affect the frequency and timing of the scheduled Services described in the Maintenance Schedule; and

(c) monitor scheduled oil sampling results and advise the Company if any change in trend or an alert has been advised.

**8. Adjustments to Price**

During the term of the Service Agreement, the Company may adjust the Price of any Goods to be provided in connection with the Services in line with adjustments to Caterpillar parts prices.

**9. Passing of risk**

**9.1 Where the Serviced Equipment is on Site**

(a) Subject to clause 9.1(b), the risk of Loss to the Serviced Equipment will pass from the Customer to the Company at the commencement of a Service, and will pass back from the Company to the Customer at the completion of the Service.

(b) If the Service is commenced but not completed on the same day, then the risk of Loss to the Serviced Equipment and any Goods supplied to the Customer will pass from the Company to the Customer each time that the Company's Personnel leaves the Site without completing the Service, and will pass from the Customer to the Company each time that the Company Personnel resumes the Service on a subsequent day.

**9.2 Where the Serviced Equipment is at the Company's premises**

(a) The risk of Loss to the Serviced Equipment will pass from the Customer to the Company upon the delivery of the Serviced Equipment to the Company's premises by the Customer.

(b) The risk of Loss to the Serviced Equipment will pass back from the Company to the Customer on the earlier of:

(i) collection of the Serviced Equipment by the Customer from the Company's premises; or

(ii) delivery of the Serviced Equipment by the Company to a carrier nominated by the Customer or arranged by the Company for the purpose of delivering the Serviced Equipment to the Customer.

**10. Termination of Service Agreement**

(a) For the avoidance of doubt, this clause is in addition to the rights and remedies contained in clause 20 below, in respect of a Service Agreement created under Part C only.

(b) The Service Agreement will immediately terminate if the Customer sells or leases the Serviced Equipment to any third party.

(c) Either party may terminate the Service Agreement by providing 30 days' written notice to the other party.

## PART D - Terms applying to all Goods and Services

**11. Priority**

(a) To the extent of any inconsistency between these Sales Terms and the terms of a Purchase Order, the Sales Terms prevail.

(b) Any contractual terms and conditions sought to be imposed by the Customer by incorporation on the Purchase Order will be void and of no effect.

**12. Payment**

**12.1 Invoicing**

The Company will invoice the Customer for the Services and Goods (the **Invoice**), with each Invoice setting out the Price and the quantity of Goods and/or Services supplied.

**12.2 Payment**

Subject to clause 12.3, the Customer must pay the Price for the Goods and/or Services supplied to the Customer:

(a) within 30 days after the date of the Invoice;

(b) in Immediately Available Funds or in any other way that the Company directs in writing to the Customer; and

(c) without any abatement, reduction, or set-off by the Customer.

**12.3 Overdue Amounts**

If payment is not made by the Customer when due, the Company may charge interest on the amount outstanding, which will accrue and be calculated on a daily basis with an interest rate equal to the Overdue Rate.

**12.4 Progress Payments**

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

**13. Performance and Delivery**

(a) Subject to clause 9 (which applies in respect of preventative maintenance services), Delivery occurs and risk of Loss to Serviced Equipment and any Goods supplied to the Customer will pass to the Customer (**Delivery**) on the earlier of:

(i) collection of the Serviced Equipment and/or Goods by the Customer;

(ii) delivery of the Serviced Equipment and/or Goods to the Customer; and

(iii) delivery of the Serviced Equipment and/or Goods by the Company to a carrier nominated by the Customer or arranged by the Company for the purpose of delivering the Serviced Equipment and/or Goods to the Customer.

(b) A failure to perform, or a delay in performance, of part or all of the Services will not entitle the Customer to terminate this Service Agreement or to claim compensation of any nature.

(c) A failure to deliver, or a delay in delivery, of part or all of any Goods subject to this Service Agreement will not entitle the Customer to terminate this Service Agreement or to claim compensation of any nature.

(d) The Customer agrees that the Company is not liable or responsible for any Loss suffered by the Customer arising by, through or in connection with the Company's repair of Serviced Equipment.

## 14. Security Interests

### 14.1 Retention of title – Goods supplied

(a) Title to and ownership of Goods remains with the Company and does not pass to the Customer until such time as all amounts which are owing by the Customer to the Company with respect to those Goods have been paid in full.

(b) The Customer acknowledges that until such time as title to and ownership of Goods passes to the Customer, the Customer is in possession of the Goods for and on behalf of the Company as bailee.

(c) Subject to clause 14.1(e), until payment is made for Goods, the Customer must store the Goods separately and in such a manner that they are clearly identified as the property of the Company.

(d) The Customer grants to the Company an irrevocable licence to enter any of the Customer's premises, exercisable upon a Termination Event, which licence to enter permits the Company by its Personnel, at its sole option to enter the Customer's premises and 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 Company will not be liable for any Loss suffered by the Customer as a result of the Company taking such actions.

(e) Until such time as title to and ownership of the Goods passes to the Customer in accordance with this clause, the Customer 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.

### 14.2 Services lien

(a) The Customer must, if requested by the Company, make full payment for Services prior to the Serviced Equipment leaving the possession of the Company or on such further or other terms as the Company may agree in writing.

(b) The Customer agrees that the Company has a lien over, and may in its absolute discretion, retain possession of the Serviced Equipment until such time as all amounts which are owing by the Customer to the Company in connection with the Services have been paid in full.

(c) If any person (other than the Customer) claims right, title or interest in Serviced Equipment and tenders full payment of the amounts owing to the Company in connection with the Services, then subject to the Company giving the Customer 48 hours written notice, the Company may accept that payment and release the Serviced Equipment to that person and the Customer waives all liability of the Company in respect of the release of the Serviced Equipment.

## 15. Goods Credit Return Policy

(a) Subject to this clause 15, credit will be given to the Customer in relation to Goods returned by the Customer within 30 days of Delivery provided that:

(i) the Goods are in "as new" re-saleable condition; and

(ii) a copy of the Company's original Invoice or packing slip accompanies the Goods being returned.

(b) Goods will not be accepted for credit after 30 days of Delivery.

(c) 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 Customer from an overseas source;

(iii) Goods supplied to the Customer 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 K25.00.

(d) The value credited for the return of Goods in accordance with clause 15(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.

(e) Any freight costs incurred in the return of the Goods to the Company are for the account of the Customer.

(f) All Goods are returned at the Customer's risk. If required, it is the Customer's responsibility to arrange insurance cover for Goods during return transportation to the Company.

(g) 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.

## 16. Goods and Services warranties

### 16.1 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 Customer, the Company gives no warranty to the Customer 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.

### 16.2 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.

### 16.3 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 Customer releases the Company from, and will indemnify, keep indemnified and hold harmless the Company in respect of all claims arising in connection with the Goods and Services;

(iii) the Customer acknowledges that it has not relied upon any representation made by the Company, which has not been stated expressly in the Service Agreement;

(iv) the Company is not 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 Customer 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.

## 17. Confidentiality

### 17.1 Obligation of confidentiality

(a) Subject to clause 17.2, the Customer must keep secret and confidential, and must not divulge or disclose any of the Company's Confidential Information.

(b) The Customer must take all reasonable steps to ensure that any person to whom it discloses the Company's Confidential Information under the Purchase Order does not make public, or disclose, the Confidential Information.

(c) If an Customer delegates any of its authorities, powers, duties or discretions under the Service Agreement to an entity or person who is not a director, officer or employee of the Customer (**Delegate**), the Company may request the Customer 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.

**17.2 Exceptions**

Clause 17.1 does not apply where the relevant Confidential Information:

(a) is public knowledge (other than as a result of a breach of the Service Agreement);

(b) is required by law to be disclosed, provided the Customer has notified the Company 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 Service Agreement.

**18. PPSA**

(a) If the Company determines that the Services Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Customer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company asks and considers necessary for the purposes of:

(i) ensuring that the security interest is enforceable, perfected and otherwise effective;

(ii) enabling the Company to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Company; or

(iii) enabling the Company to exercise rights in connection with the security interest.

(b) The Company need not give any notice under the PPSA unless the notice is required by the PPSA and cannot be excluded.

**19. Intellectual Property**

The Customer 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.

**20. Termination**

(a) It is a **Termination Event** if:

(i) any amount payable by the Customer to the Company is not paid when due;

(ii) the Customer makes any false representation (whether by act or omission) in respect of the Serviced Equipment;

(iii) the Customer breaches or fails to comply with any term of the Service Agreement;

(iv) an Insolvency Event occurs with respect to the Customer;

(v) a change in control of the Customer occurs.

(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 Customer to the Company, whether or not due and payable, to be immediately due and payable;

(ii) refuse to supply Goods or Services to the Customer;

(iii) terminate the Service Agreement; or

(iv) repossess and remove all Goods for which title has not passed to the Customer in accordance with clause 14.1(d).

**21. General**

**21.1 Variation of Service Agreement**

The Service Agreement may not be varied by the Customer except with the written consent of the Company.

**21.2 Assignment**

(a) The Company may transfer, assign, novate or sub-contract any of its rights or obligations under the Service Agreement without the prior written consent of the Customer.

(b) The Customer's rights and obligations arising out of or under the Service Agreement are not assignable by the Customer without the Company's prior written consent.

**21.3 Further Assurances**

The Customer 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 the Service Agreement or any obligation under them.

**21.4 Waiver**

(a) Waiver of any right by the Company arising from a breach of the Service Agreement by the Customer 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 the Service Agreement or on the occurrence of a Termination Event does not result in a waiver of that right.

(c) Relationship between the parties

The Service Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

**21.5 Severability**

(a) A provision of, or the application of a provision of, the Service Agreement 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 the Service Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Service Agreement.

**21.6 Variation of Sales Terms**

The Company may, in its absolute discretion, vary these Sales Terms at any time by notice to the Customer by any of the following methods:

(a) by written notice to the Customer's last known postal address;

(b) by email notice to the Customer's last known email address; or

(c) by uploading the varied Sales Terms onto the public website of the Company (www.hastingsdeering.com.au).

**21.7 Entire agreement**

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

**21.8 Governing law and jurisdiction**

The Service Agreement is governed by and construed in accordance with the law of Papua New Guinea and the parties submit to the non-exclusive jurisdiction of the courts of Papua New Guinea.

**22. Definitions**

**22.1 Defined Terms**

In these Sales Terms:

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

**Company** means Hastings Deering (PNG) Limited Registration Number 1 - 16996

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

**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 Customer in connection with the Services.

**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 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.

**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.

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

**Maintenance Schedule** means the preventative maintenance schedule for the Serviced Equipment provided in writing by the Company to the Customer.

**Overdue Rate** means the Westpac indicator or benchmark rate as published in the Australian Financial Review on the date the relevant amount is due for payment (or any other equivalent benchmark rate selected by the Company in its absolute discretion) plus 2%.

**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 Security Act 2011* (PNG).

**Purchase** Order has the same meaning as described in the Work Authorisation, Quote or Maintenance Schedule (as applicable).

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

**Progress Payment** means that portion of the Price, if any, payable in accordance with clause 12.4.

**Quote** means the fixed Price of a Service to the Serviced Equipment provided in writing by the Company to the Customer.

**Related Company** has the meaning given to that term in the *Companies Act 1997* (PNG).

**Security Interest** means any:

(a) security interest under the PPSA or security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement;

(b) right, interest or arrangement which has the effect of giving another person a preference, priority or

advantage over creditors including any right of set-off; or

(c) third party right or interest or any right arising as a consequence of the enforcement of a judgement,

or any agreement to create any of them or allow them to exist.

**Services** means the services supplied, or to be supplied, by the Company to the Customer as ordered by the Customer from the Company.

**Serviced Equipment** means goods, equipment, components, parts, accessories and other materials which are owned, leased or hired by the Customer, which are specified in the Work Authorisation, Quote or Maintenance Schedule (as applicable), and are the subject of Services provided by the Company.

**Site** means the Customer's site specified in the Maintenance Schedule.

**Travel Cost (Km)** means the distance travelled by a Company service vehicle with the purpose of providing the Service between the Company's nearest branch and the Site.

**Travel Cost (hours)** means the labour hours used and dedicated to travel from the Company's nearest branch to the Site.

**Work Authorisation** means an estimate of the Price of a Service to the Serviced Equipment provided in writing by the Company to the Customer.

**22.2 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 novation's 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 kina or K is a reference to the lawful currency of Papua New Guinea 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.