Sales Terms

Hastings Deering (PNG) Limited

A Sime Darby Industrial Company

Hastings Deering CAT

SALES TERMS

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

1. Purchase Orders

1.1 Ordering procedure

(a) Where the Customer wishes to acquire Goods or Services, the Customer will send a Purchase Order to the Company.

(b) Each such Purchase Order forms an agreement between the parties comprised of the Purchase Order and the terms of the Credit Application incorporated by reference in them.

(c) The parties may enter into more than one Purchase Order and the details in each Purchase Order only apply to the Goods or Services to be provided under that Purchase Order.

1.2 Priority

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

1.3 Terms of Purchase Orders

Each Purchase Order must contain:

(a) the quantity and description of the Goods or Services to be purchased;

(b) the price of the Goods or Services unless otherwise specified by the Company;

(c) details of any Progress Payments (if applicable); and

(d) particulars of the proposed delivery of the Goods or Services, including the Delivery Date and Supply Address.

1.4 Variation of Purchase Orders

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

2. Price

2.1 Price includes all costs except GST

The Price, unless otherwise agreed in writing, includes:

(a) delivery of the Goods or Services to the Supply Address;

(b) the cost of packaging;

(c) loading and insurance charges; and

(d) sales tax (where applicable),

but excludes GST.

2.2 GST

(a) Unless expressly included, the consideration for any supply under or in connection with these Sales Terms does not include GST.

(b) To the extent that any supply made under or in connection with these Sales Terms is a taxable supply, the recipient must pay, in addition to the consideration to be provided under these Sales Terms for that supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

(c) The recovery of any amount in respect of GST by the Company under these Sales Terms is subject to the issuing of a tax invoice or adjustment note.

3. Goods delivery and passing of risk

(a) Delivery occurs and risk of Loss to Goods will pass to the Customer (**Delivery**) on the earlier of:

(i) collection of the Goods by the Customer;

(ii) delivery of the Goods to the Customer; and

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

(b) The Company is not liable for any failure to Deliver Goods, including by any date agreed in writing by the Company as the date for Delivery or for delay in Delivery of Goods occasioned by any cause whatsoever, whether or not beyond the control of the Company.

(c) The Company will use its reasonable endeavours to Deliver the Goods in accordance with the terms of a Purchase Order but will not be liable for any failure to Deliver the Goods in accordance with any particular requirements of the Customer.

(d) Failure to Deliver part or all of the Goods the subject of a Purchase Order at any agreed Delivery time will not entitle the Customer to terminate the Purchase Order or to claim compensation of any nature.

(e) The Customer is not entitled to reject Goods on the basis of late Delivery.

4. Services terms

(a) The Customer may request a Service Workshop Costing in relation to Services to be provided by the Company.

(b) The Services performed in connection with a Service Workshop Costing are performed subject to the terms of the Credit Application and to the extent of any inconsistency between any of the terms of the Credit Application and the terms of any Service Workshop Costing, the terms of the Credit Application prevail.

(c) The Price estimate contained in a Service Workshop Costing:

(i) is an estimate only and may have been prepared by a visual inspection of the Serviced Equipment only; and

(ii) is based, as applicable, on award rates, prices of material, general factory costs, general overhead charges, insurance and exchange rates, customs duties and other costs existing as at the date of the Service Workshop Costing and any changes to such matters either before acceptance or during progress of the Services are payable by the Customer in addition to the Price estimate set out in the Service Workshop Costing.

(d) 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 Service Workshop Costing, the Company may, in its absolute discretion, cease providing the Services and request that the Customer accept a revised Service Workshop Costing 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 Service Workshop Costing.

(e) 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:

(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 Customer until such time as all amounts which from time to time 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 5.1(e), until payment is made for Goods, the Customer shall store those 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 3, the Customer must not, without the written consent of the Company:

(i) grant or register, or permit to be granted or registered any charge or lien over any of the Goods in favour of another person which rank in priority to the Company's interests 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 Customer 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 Customer 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 Customer to the Company in connection with Services have been paid in full.

(c) If an Customer 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 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 Service Workshop Costing.

(d) 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 relevant 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.

6. Payment

6.1 Invoicing

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

6.2 Payment

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

(a) in Immediately Available Funds in accordance with clause **Error! Reference source not found.** (*Payment Terms*) of the Credit Terms; or

(b) in any other way that the Company directs in writing to the Customer.

6.3 Progress Payments

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

7. Goods Credit Return Policy

(a) Subject to this clause 7, 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 7(a), if any, will be in the absolute discretion of the Company, and in any case limited to the original Price of the Goods less the following deductions:

(i) a 3.5% handling and restocking charge in relation to Goods held in stock by the relevant store location of the Company from which the Goods were initially ordered;

(ii) a 10% handling and restocking charge in relation to Goods **not** held in stock by the relevant store location of the Company from which the Goods were initially ordered; and

(iii) any procurement costs (including freight costs) incurred by the Company in connection with the original sale of the Goods.

(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.

8. Customer indemnity

The Customer 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 Customer; and

(b) any breach of the Credit Application or a Purchase Order by the Customer.

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 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.

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 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 these Sales Terms;

(iv) the Company will not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from Goods and Services or any defect; and

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

(vi) Notwithstanding anything else in these Sales Terms, 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:

(vii) the cost of replacing the Goods;

(viii) the cost of obtaining an equivalent product; or

(ix) the cost of having the Goods repaired,

whichever the Company may elect.

(b) 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.

10. General Representations and warranties

10.1 Reliance

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

10.2 Representations

The Customer 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 Customer Representatives have authority to bind the Customer 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.

11. Confidentiality

11.1 Obligation of confidentiality

(a) Subject to clause 11.2, 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 Confidential Information under the Credit Application or a 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 Credit Application or a Purchase Order 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.

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) 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 Credit Application or a Purchase Order.

12. 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.

13. 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 Credit Application;

(iii) the Customer breaches or fails to comply with any term of the Credit Application;

(iv) an Insolvency Event occurs with respect to the Customer or a guarantor of the Customer's indebtedness to the Company;

(v) any guarantor of the Customer's indebtedness to the Company revokes a guarantee; or

(vi) 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 Credit Application and refuse to provide credit to the Customer; or

(iv) repossess and remove all Goods for which title has not passed to the Customer in accordance with clause 5.1(d).

14. General

14.1 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 Customer.

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

14.2 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 these Sales Terms or any obligation under them.

14.3 Waiver

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

14.4 Relationship between the parties

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

14.5 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.

14.6 Variation of Sales Terms

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

(a) by written notice to the address listed in section 1 (*Details of Customer*) of the Credit Application;

(b) by email notice to the email address listed in section 1 (*Details of Customer*) of the Credit Application; or

(c) by uploading the varied Sales Terms onto the public website of the Company.

14.7 Entire agreement

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

14.8 Governing law and jurisdiction

These Sales Terms are 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.

15. Definitions

15.1 Defined Terms

In these Sales Terms:

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

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

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

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 a Purchase Order.

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

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

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

Delivery has the meaning given in clause 3.

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

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

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.

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

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

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

PPSA means the Personal Property Security Act 2011 (PNG).

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

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 6.3.

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

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

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.

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

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

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

Termination Event has the meaning set out in clause 13.

15.2 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 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.

15.3 PPSA

(a) If the Company determines that the Credit Application (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.