



## Primec - Terms of Trade - Sales & Service

### 1. The Parties

These terms and conditions govern the supply of all Goods and Services by Haynes Mechanical Pty Ltd, Trading As Primec ("the Company") to the exclusion of all other terms unless specifically agreed in writing.

### 2. Formation of Service Agreement

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

- (i) the Company may issue a Work Authorisation or Quote to the Customer; and
- (ii) within 30 days of receipt of the Quote or Work Authorisation, the Customer will issue a purchase order or email of acceptance of the Quote or Work Authorisation to the Company as an offer to purchase the Goods and Services.

(b) The email confirmation or purchase order will either then be formally accepted by the Company, or the Company will take such steps to commence the Services or provisions of Goods and then an agreement between the parties is formed, comprising of the Purchase Order and these Terms of Trade (the **Service Agreement**).

(c) If a Customer has not accepted the Quote or Work Authorisation within a reasonable period of time, the Customer agrees that the Company may retain any equipment provided by the Customer in order for the Company to provide the Quote until full payment of any initial strip down or review charges for work undertaken to date is received by the Company.

### 3. Performance of Services

(a) The Price estimate contained in the Quote or 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.

(b) The Customer agrees that where the Company, following the commencement of Services, considers that additional work including labour, 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.

(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 Customer's decision not to accept the revised Quote, undertake the additional work or purchase the additional parts or other materials
- (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.

### 4. Time for Service

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

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

(c) 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.

(d) The Customer must ensure the Serviced Equipment is clean and available at the

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agreed date and time for the period required by the Company to perform the Service.

## 5. Location for Service

- (a) The Company will provide the Service at the Company premises unless provision of the Services on Site is 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) 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.
- (e) 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.

## 6. Passing of risk

### 6.1 Where the Serviced Equipment is on Site

- (a) Subject to clause 6.1(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.

### 6.2 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.

## 7. Appointment

- (a) The relationship between the Customer and the Company for the provision of the Services is the supply of Company employees and independent contractors at the Customer request to perform the requested work.
- (b) The parties will appoint a Representative to act on their behalf in regards to the Services.

## 8. Scope of Services

- (a) The Services will be carried out at the Site, or at such other places as agreed to between the parties from time to time.
- (b) The Company will perform the Services in a diligent manner, and have regard to the needs of the Customer as advised by the Customer Representative from time to time.
- (c) If the Company becomes aware of any matter which may change or delay the performance of the Services, it will advise the Customer. The advice will include particulars of the likely change or delay and recommendations to minimise any adverse effects.
- (d) The Company will provide the Services in accordance with the policies and procedures that are notified to it by the Customer, and it will ensure that any Company Personnel perform the Services in accordance with those policies and procedures.
- (e) The Company will inform the Customer as soon as reasonably possible, should a person who is performing the Services be prevented by resignation, sickness, injury or any other unforeseen circumstances from carrying out the Services. In these circumstances, the Company will use reasonable endeavours to provide a replacement for that person who has comparable skills and experience.
- (f) The Services will be carried out under the care, control and supervision of the Customer. The Customer acknowledges and agrees the Company is not liable to the Customer in respect of any damage, loss or injury of whatsoever nature or kind, however caused, whether by the negligence of the Company or the Company Personnel, suffered or incurred directly or indirectly in respect of the Services provided under this Service Agreement.

## 9. Health and Safety

- (a) Company Personnel will comply with the safety rules and regulations which arise under legislation relating to workplace health and safety, and under the Customer's policies and

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procedures which are notified to the Company.

- (b) The Customer and the Customer Representative must provide Company Personnel with:
  - (i) Safe access to the Location and any other place where the Services are to be provided;
  - (ii) adequate facilities for the welfare at work of the Company Personnel, including ensuring access to those facilities; and
  - (iii) any information, induction, training, instruction or supervision that is necessary.
- (c) In the event of a workplace health and safety incident involving Company Personnel, the parties must co-operate in any subsequent investigation, and work together to either eliminate the risk of the incident occurring again, or if it is not reasonably practicable to eliminate that risk, to minimize the risk as far as reasonably practicable. However, the parties are not obliged to share any information or document that is subject to legal professional privilege.

## 10. Business Protection

- (a) The Customer warrants that for a period of three months after the date of termination of the Services, the Customer and any person performing the Services will not, without the prior written consent of the Company:
  - (i) entice or attempt to entice away from the Company any person who is an employee of the Company during the three months preceding the termination of the Services; or
  - (ii) solicit or persuade any customer or client of the Company with whom the Customer or any person performing the Services had work related dealings during the three months preceding the termination of the Services, to cease doing business with the Company or reduce the amount of business which the person would normally do with the Company.
- (b) The Customer acknowledges that the restraints imposed by this clause are reasonable to protect the interests of the Company.

## 11. Priority

- (a) To the extent of any inconsistency between these Sales & Service Terms and the terms of a Purchase Order, the Sales & Service 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. Price

- (a) During the term of the Service Agreement, the Company may adjust the Price of any Goods to be provided in connection with the Services and the Services in line with adjustments to Company prices.
- (b) Unless otherwise agreed in writing, the Price excludes transport of Goods, packaging of Goods and delivery of the Goods or Services to the Supply Address,

## 13. Payment

### 13.1 Invoicing

- (a) The Company will invoice the Customer for the Services and Goods (the **Invoice**). Each Invoice will set out the Price, a description of and the quantity of Goods and/or Services supplied and will be a valid tax invoice which complies in all respects with the GST Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.

### 13.2 Payment

Other than for cash sales where payment for Services are due and payable immediately upon delivery, subject to clause 13.3, the Customer must pay the Price for the Goods and/or Services supplied to the Customer:

- (a) within 30 days after the end of the month in which the invoice is issued;
- (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.

### 13.3 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.

### 13.4 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.

### 13.5 Performance and Delivery

- (a) Delivery occurs to Serviced Equipment and any Goods supplied to the Customer (**Delivery**) on the earlier of:

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- (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 reject the Goods, 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 and Services warranties

### 15.1 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.

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## 15.2 Services warranties

- (a) Services other than those the Subject of Part F 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.

## 15.3 Exclusions

- (a) To the extent permitted by law and except as set out in these Terms of Trade:
  - (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 Terms of Trade, 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.
- (d) Nothing in these Terms of Trade is intended to exclude, restrict or modify rights which the Customer may have under the Australian Consumer Law or otherwise which may not be excluded, restricted or modified by agreement.

## 16. Confidentiality

### 16.1 Obligation of confidentiality

- (a) Subject to clause 16.2, 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 a 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.

### 16.2 Exceptions

Clause 16 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.

## 17. Personal Property Securities Law

- (a) The Customer acknowledges that under the Service Agreement the Customer grants Security Interests to the Company including a retention of title in respect of the Goods and a lien in respect of the Serviced Equipment.

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- (b) The Customer acknowledges that the Service Agreement constitutes a Security Agreement.
- (c) The Security Interests arising under the Service Agreement attach to the Goods or Serviced Equipment (as applicable) when the Customer 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 the Service Agreement at any later time.
- (d) The Customer acknowledges that the Company may perfect its Security Interests by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act.
- (e) The Customer undertakes to do anything reasonably required by the Company to enable the Company to register its Security Interests, with the priority the Company requires, and to maintain the registration.
- (f) The Customer must pay the Company all registration and enforcement costs and expenses which the Company may incur in:
  - (i) preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interests that are granted to the Company under the Service Agreement;
  - (ii) maintaining those registrations; and
  - (iii) enforcing any Security Interests granted to the Company under the Service Agreement.
- (g) The Company does not need to give the Customer any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.
- (h) The parties agree that neither party will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.
- (i) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in the Service Agreement except that the following provisions of the PPS Act will not apply:
  - (i) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer;
  - (ii) subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - (iii) section 125 (obligation to dispose of or retain collateral);
  - (iv) section 130 (notice of disposal), to the extent that it requires the Company to give the Customer a notice;
  - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (vi) subsection 132(4) (statement of account if no disposal);
  - (vii) section 135 (notice of retention);
  - (viii) section 142 (redemption of collateral); and
  - (ix) section 143 (reinstatement of security agreement).

## 18. 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.

## 19. 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).

## 20. General

### 20.1 Variation of Service Agreement

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

### 20.2 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.

### 20.3 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.

### 20.4 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.

### 20.5 Relationship between the parties

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

### 20.6 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.

### 20.7 Variation of Terms

The Company may, in its absolute discretion, vary these 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 Terms onto the public website of the Company ([www.primec.net.au](http://www.primec.net.au)).

### 20.8 Entire agreement

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

### 20.9 Governing law and jurisdiction

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

## 21. Dispute Resolution

- (a) If a Dispute under this Agreement arises, then:
  - (i) the party that wishes to raise a Dispute must notify the other party in writing of the nature of the Dispute (**Notice of Dispute**);
  - (ii) the Notice of Dispute must state that it is a dispute under this clause;
  - (iii) a senior representative from each party with authority to resolve the Dispute will meet within 10 Business Days of the Notice of Dispute to attempt to resolve the Dispute;
  - (iv) any meetings or discussions held between the parties to resolve the Dispute will be held on a without prejudice basis;
  - (v) if an agreement is reached to resolve the Dispute, the agreement will be documented in writing and signed by both parties;
  - (vi) if no agreement is reached between such representatives within 20 Business Days, either party may commence legal proceedings.
- (b) During a Dispute, the parties will continue to perform their obligations under this Agreement, unless the Dispute relates to the health and safety of Company Personnel.

Clause 21(a) does not prevent a party from seeking injunctive relief.

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## 22. Definitions

### 22.1 Defined Terms

In these Terms:

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

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

**Company** means the applicable SDIS Group Company providing the Goods or Services consisting of either Haynes Mechanical Pty Ltd Trading As Primec, TFP Engineering Pty Ltd or Austchrome Pty Ltd

**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.

**Dispute** means any dispute, difference or issue between the parties concerning or arising out of or in connection with or relating to this Agreement or the subject matter of this agreement or the breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of this Agreement.

**Fees** means the fees and any disbursements for the provision of the Services specified by the Company in the Quote.

**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.

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

**Company Personnel** means a person employed or engaged by the Company to assist in the provision of 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.

**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 Bodies Corporate.

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

**Purchase Order** has the same meaning as described in the Work Authorisation or Quote.

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

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

**Progress Payment** means that portion of the Price, if any, payable in accordance with clause 23.4 .

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

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

**Representative** means the person(s) nominated by the respective party as their representative for the purposes of the Services

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

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

**Services** means the services supplied, or to be supplied, by the Company to the 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

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Customer, which are specified in the Work Authorisation or Quote (as applicable), and are the subject of Services provided by the Company.

**Site** means the Customer's site at which the parties agree the Services are to be performed .

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

**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.

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

**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 Terms:

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

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