

## CONTRACT PARTICULARS

**This agreement is made between:**

<b>Company &amp; ABN:</b>	
<b>Company's address:</b>	

and

<b>Buyer:</b>	
<b>Buyer's address:</b>	

<b>Company's Rep &amp; phone #:</b>	
<b>Buyer's Rep &amp; phone #:</b>	

<b>Commencement Date:</b> (clauses 1.6 and 4.1)		<b>Term:</b> (clause 1.30 and 4)	(insert period):
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<b>Maintenance Services:</b> (clause 1.19)  (insert description or attach scope)	
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<b>Price:</b> (clauses 1.24 and 11)  (insert price or attach pricing schedule)	
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<b>The Price shall be fixed until:</b> (clause 12)		Does the Price include the costs of any replacement parts, material or equipment? (clause 11.2)	Yes      No  (insert details:)	The Company's mark-up for off-site overheads and profit on the costs of any replacement parts, materials or equipment that Company provides is: (clause 11.3)  (insert percentage or mark as 'Not Applicable' if the price already includes cost of replacement parts, material or equipment)	(insert details):
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**EXECUTED** as an agreement

Signed for the **Company** by its authorised representative: )  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

Signed for the **Buyer** by its authorised representative: )  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

## TERMS AND CONDITIONS OF MAINTENANCE SERVICES – TRIVANTAGE GROUP OF COMPANIES

The following Terms and Conditions govern all Orders placed by the Buyer and will be incorporated into each Contract entered between the Buyer and the Company.

### 1. Definitions.

In these Terms and Conditions:

- 1.1. **Approval** means any approval, authorisation, certificate, consent, determination, exemption or permit of any Government Authority.
- 1.2. **Building Services Equipment** means those items of plant and equipment (including access equipment) either at the premises and agreed to be available for use by the Company, or provided by the Buyer for use by the Company, in the performance of Maintenance Services.
- 1.3. **Business Day** means:
  - 1.3.1. for receiving a notice under **clause 23**, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
  - 1.3.2. for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia.
- 1.4. **Buyer** means the person or entity stated in the Contract Particulars.
- 1.5. **Change in Law** means:
  - 1.5.1. the adoption, enactment or application to the Company of any Relevant Law not existing, foreseeable or otherwise applicable to the Company on the Quotation date; or
  - 1.5.2. any change in a Relevant Law or the application or interpretation of a Relevant Law after the Quotation date,in either case that affects (including time or cost) the ability of the Company to perform its obligations under the Contract.
- 1.6. **Commencement Date** means the date stated in the Contract Particulars.
- 1.7. **Company** means the company stated in the Contract Particulars.
- 1.8. **Confidential Information** means any information provided by the Buyer to the Company:
  - 1.8.1. which the Buyer has identified as confidential; or
  - 1.8.2. the Company ought reasonably to know is confidential,but excludes any confidential information of the Buyer that:
  - (a) is in or becomes part of the public domain other than through a breach of the Contract by the Company; or
  - (b) was already in the Company's possession at the time of receipt from the Buyer without any obligation of confidentiality to the Buyer.
- 1.9. **Contract** means:
  - 1.9.1. any contract to which these Terms and Conditions are expressed to form part; or
  - 1.9.2. for the supply of Maintenance Services pursuant to an Order, the contract (which includes these Terms and Conditions) formed in accordance with **clause 5.7**.
- 1.10. **day** means a calendar day.
- 1.11. **Delay Event** means any event which is beyond the reasonable control of the Company, including:

- 1.11.1. a breach of this agreement by the Buyer;
- 1.11.2. any act, default or omission of the Buyer or its consultants, agents, other contractors or subcontractors;
- 1.11.3. an event or circumstance described in **clause 11.4**;
- 1.11.4. suspension under the Security of Payment Act or **clause 22.1**, and
- 1.11.5. a Force Majeure Event.
- 1.12. **Dispute** means that there must be both a claim and a rejection (in whole or part) of it.
- 1.13. **Force Majeure Event** means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under the Contract.
- 1.14. **Government Authority** means any Federal, State or local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within Australia or elsewhere.
- 1.15. **GST** means the tax payable on taxable supplies under the GST Law.
- 1.16. **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related law imposing such tax.
- 1.17. **Intellectual Property Rights** means any and all intellectual property rights granted by law or equity from time to time, including any patent, registered design, trademark or name, copyright or other protected right.
- 1.18. **Loss** means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent).
- 1.19. **Maintenance Services** means the undertaking of maintenance or repair services by the Company as outlined in the Contract Particulars.
- 1.20. **Off-site Overheads** means head office costs of the Company, including the directors, senior managers, estimators, and accounts personnel not directly involved in the performance of the Maintenance Services or the Contract, but, excluding the Preliminaries.
- 1.21. **Order** means an order placed by the Buyer with the Company for the performance of the Maintenance Services by the Company, whether made in writing, electronically (including by email) or verbally.
- 1.22. **Order Confirmation** means the confirmation of an Order issued by the Company to the Buyer.
- 1.23. **Preliminaries** means the on-site and off-site preliminaries of the Company, including the Company's tools, plant and equipment (including by way of hire), project manager, and supervisory staff.
- 1.24. **Price** means the price payable for the Maintenance Services as agreed between the Company and the Buyer in accordance with **clause 11**, but excludes any additions or deductions which may be required to be made under the Contract.
- 1.25. **Privacy Laws** means the data protection and information privacy laws in Australia, including the *Privacy Act 1988* (Cth).
- 1.26. **Quotation** means a written quotation (including a tender offer, or tender letter) by the Company setting out the proposed terms of the Maintenance Services.
- 1.27. **Relevant Law** means
  - 1.27.1. acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Maintenance Services or any part thereof is being carried out;

- 1.27.2. certificates, licences, consents, permits, approvals and requirements of any Government Authority and other organisations having jurisdiction in connection with carrying out the Maintenance Services;
- 1.27.3. the National Construction Code (including the Building Code of Australia);
- 1.27.4. any Australian Standards or other standards relevant to the performance of the Maintenance Services; and
- 1.27.5. fees and charges payable in connection with the foregoing.
- 1.28. **Security of Payment Act** means the applicable security of payment legislation.
- 1.29. **Specification** means any written document (including drawings, specifications, schedules) which defines the scope of the Maintenance Services which has been incorporated in the Contract, and any modification to such documents and any other document that may be provided for use for the purpose of the Contract.
- 1.30. **Term** means the period stated in the Contract Particulars.
- 1.31. **Terms and Conditions** means these terms and conditions of Maintenance Services.
- 1.32. **Variation** has the meaning given in **clause 20.1**.
- 1.33. **Variation Quotation** means a quotation by the Company for a Variation.
- 1.34. **Warranty Period** means a period of twelve (12) months from the date of completion of each item of Maintenance Services.

## 2. Interpretation.

- 2.1. In the Contract, headings and bold text are for ease of reference only and do not affect the interpretation of this agreement and, unless the context otherwise requires:
  - 2.1.1. the singular includes the plural and vice versa;
  - 2.1.2. another grammatical form of a defined word or expression has a corresponding meaning;
  - 2.1.3. a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to the Contract and a reference to the Contract includes any schedule or annexure;
  - 2.1.4. a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - 2.1.5. subject to **clause 23**, a reference to time is to Victorian time;
  - 2.1.6. a reference to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - 2.1.7. a reference to a person includes a natural body, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - 2.1.8. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 2.1.9. the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
  - 2.1.10. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.
- 2.2. If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

### 3. Application of these Terms and Conditions.

- 3.1. The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Company. Placement of an Order by the Buyer is conclusive evidence of the Buyer's acceptance that the Terms and Conditions apply and are binding on the Buyer.
- 3.2. Except to the extent that the Contract draws on the Quotation in **clauses 9 or 11** the Contract constitutes the entire agreement between the Buyer and the Company with respect to an Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of the Contract. Unless expressly stated otherwise in the Contract, no other agreement (including any form of head contract agreement) which the Buyer may have entered, will enter, or intends to enter shall form, or be deemed or implied to form, whether in full or in part, part of the Contract.
- 3.3. Any purported incorporation of other standard terms and conditions by the Buyer is void and of no effect, unless specifically identified in the Contract.
- 3.4. Where there is any discrepancy between the Terms and Conditions and those that may be included in or implied by any document forming part of any enquiry, order or contract, these Terms and Conditions will prevail, except in so far as they are expressly varied by the Company in writing or otherwise by law.
- 3.5. The Company provides no warranty or assurance, and the Buyer acknowledges and accepts that the Company is under no obligation to warrant or ensure that:
  - 3.5.1. the Maintenance Services will satisfy any obligation of the Buyer; or
  - 3.5.2. that the Company will not cause the Buyer to be in breach of any obligation of the Buyer;under any other agreement (including any form of head contract agreement) which the Buyer may have entered, will enter, or intends to enter.

### 4. Term

- 4.1. This Contract will commence on the Commencement Date and will continue for the Term unless:
  - 4.1.1. terminated earlier in accordance with the Terms and Conditions, or
  - 4.1.2. the parties agree in writing to a revised Term prior to the then current Term expiring.
- 4.2. If any Orders accepted by the Company before the expiry of the Term have not been completed by the expiry of the Term the Company must complete those Orders and the Terms and Conditions will continue to apply to those Orders.

### 5. Quotations, Orders and Contract Formation.

- 5.1. A Quotation issued by the Company to the Buyer is an offer to perform the Maintenance Services and will not create any contract except in accordance with **clause 5.7**.
- 5.2. Unless the Quotation states otherwise, the Quotation is provided on the basis that the Maintenance Services will be subject to these Terms and Conditions.
- 5.3. The Company may withdraw, revoke or vary a Quotation at any time prior to its acceptance.
- 5.4. Unless otherwise stated in writing by the Company, all Quotations will automatically lapse thirty (30) days after the date of the Quotation.
- 5.5. The Buyer may submit Orders to the Company from time to time, but the Company may accept or refuse any Order in its absolute discretion, even if the Order is placed in response to a Quotation.
- 5.6. There is no obligation on the Company to enquire as to the authority of any person placing an Order on behalf of the Buyer.

- 5.7. An Order is accepted by the Company and a Contract is made when the Buyer receives an Order Confirmation from the Company or the Company commences performance of the Maintenance Services identified in the Order, whichever occurs first.
- 5.8. Any purported cancellation by the Buyer, to which the Company has not consented, may be treated by the Company as a repudiation of the Contract by the Buyer.

## **6. General Obligations.**

- 6.1. The Company will:
- 6.1.1. subject to the terms of the Contract, perform the Maintenance Services to the standard of reasonable care and skill to be expected of contractors who regularly act in the capacity in which the Company is engaged and who possess the knowledge, skill and experience of a contractor to act in that capacity; and
  - 6.1.2. carry out the Maintenance Services based on the information available to the Company at the time when the Maintenance Services is being carried out. The Company will not take any responsibility, nor accept any liability, for Loss arising out of matters relevant to the Maintenance Services that arise due to circumstances that become known to the Company after the time that the Maintenance Services was carried out.
- 6.2. The Buyer must:
- 6.2.1. pay the Price at the time and in the manner set out in the Contract;
  - 6.2.2. pay or reimburse the Company any other money that the Company becomes entitled to under the Contract;
  - 6.2.3. provide the Company with any technical information or other information reasonably required by the Company in carrying out its obligations regarding the Maintenance Services;
  - 6.2.4. provide all reasonable support and co-operation reasonably requested by the Company in connection with the Maintenance Services;
  - 6.2.5. unless expressly stated otherwise in the Contract, obtain and maintain all Approvals necessary in connection with the Maintenance Services;
  - 6.2.6. provide all temporary services and facilities reasonably required by the Company to perform the Maintenance Services at no cost to the Company; and
  - 6.2.7. for any site where the Company is to perform any part of the Maintenance Services:
    - (a) secure any such site;
    - (b) provide the Company with clear and uninterrupted access;
    - (c) notify the Company of the location of all hidden services; and
    - (d) allow or procure that the Company may undertake the Maintenance Services continuously and without delay or disruption by the Buyer or any third party, failing which, the Company is entitled to claim the reasonable costs incurred by the Company resulting from delay or disruption and the Buyer must reimburse the costs.

## **7. Maintenance Services.**

- 7.1. The Company must do and provide all things reasonably necessary for the provision of the Maintenance Services to the Buyer in accordance with:
- 7.1.1. the description of the Maintenance Services in the Contract; and
  - 7.1.2. all Relevant Laws and Approvals.
- 7.2. Except as otherwise provided in the Contract, the Buyer must:

- 7.2.1. notify the Company in writing before the commencement of the Maintenance Services of any known defects in the plant, equipment or goods being serviced or any hazards at, or adjacent to, the site at which the Maintenance Services are to be performed;
- 7.2.2. provide in a timely manner all information reasonably requested by the Company in relation to the location at which the Maintenance Services are to be performed;
- 7.2.3. provide in a timely manner any deliverables, replacement parts, plant, equipment or materials identified in the Contract as being required to be supplied by the Buyer;
- 7.2.4. ensure that any Building Services Equipment is in a safe and workable condition; and
- 7.2.5. within seven (7) days after the discovery of any alleged defect or deficiency in the performance of the Maintenance Services notify the Company in writing.

## 8. Reliance

- 8.1. The Buyer:
  - 8.1.1. warrants that all parts of the Specification provided by the Buyer accurately describe the purpose and requirements of the Maintenance Services;
  - 8.1.2. warrants that the Buyer has not omitted any information as to what Maintenance Services the Buyer requires the Company to undertake; and
  - 8.1.3. acknowledges that it is aware that the Company has entered into this Contract relying upon these warranties.

## 9. Discrepancies

- 9.1. Unless stated otherwise in the Contract, in the event of any ambiguity, inconsistency or discrepancy in any document which defines the scope or technical requirements of the Maintenance Services the following order of precedence shall apply:
  - 9.1.1. the Order Confirmation;
  - 9.1.2. the most recent Quotation;
  - 9.1.3. the Specification.
- 9.2. If the order of precedence in **clause 9.1** does not resolve the ambiguity, inconsistency or discrepancy and the resolution required by the Buyer causes the Company to incur more cost than the Company could reasonably have anticipated at the time of preparing the Quotation, the Company is entitled to claim the costs incurred and the Buyer must reimburse the Company the costs claimed.

## 10. Time and delay

- 10.1. The Company must use reasonable endeavours to perform the Maintenance Services in a timely manner.
- 10.2. The Company will be entitled to an extension of the period of time to perform the Maintenance Services by a period of not less than the duration of a Delay Event if it has, or is likely to be delayed in performing the Maintenance Services by a Delay Event. Within a reasonable time after the Company becomes aware of a Delay Event, the Company will notify the Buyer of the Delay Event and the new period to perform the Maintenance Services.
- 10.3. If a Delay Event of the type described in **clauses 1.11.1 to 1.11.4** occurs and the Company incurs additional costs (including any delay or disruption costs) in relation to such event, the Company is entitled to claim the additional costs incurred and the Buyer must reimburse the Company the costs claimed.
- 10.4. The Buyer is not entitled to any damages (including liquidated damages) in respect of any delay or disruption of the Company, including the Company failing to complete the performance of the Maintenance Services in a timely manner.



- 10.5. Where **clause 10.4** is found to be void or unenforceable for any reason, the Company's aggregate liability arising out of any delay or disruption of the Company, or the Company failing to complete the performance of the Maintenance Services in a timely manner, is limited to 10% of the Price paid by the Buyer for the completed Maintenance Services.

## 11. Price.

- 11.1. The Price charged will be:
- 11.1.1. the Price set out in the Contract Particulars; or
  - 11.1.2. if the Price is not set out in the Contract Particulars, the price set out in the Order Confirmation; or
  - 11.1.3. if there is no Order Confirmation or the Order Confirmation does not set out a price, the price set out in the most recent Quotation issued by the Company (if any); or
  - 11.1.4. if neither **clause 11.1.1**, **11.1.2** or **11.1.3** applies, the price agreed in writing by the Company and the Buyer; or
  - 11.1.5. if none of the above applies, the Company's current list price for the Maintenance Services,
- subject to any adjustment in accordance with the Contract.
- 11.2. Whether the Price of the Maintenance Service includes or does not include the cost of any replacement parts, materials and equipment is stated in the Contract Particulars.
- 11.3. Where the Contract Particulars state that the cost of any replacement parts, materials and equipment is not included in the Price, the Company will be entitled to the mark-up stated in the Contract Particulars, or where no mark-up is stated a mark-up of 15%.
- 11.4. Unless specified to the contrary in the Contract, the Maintenance Services do not include, and no allowance has been made by the Company in the Price for:
- 11.4.1. the Company obtaining access to any property not controlled by the Company, including any adjoining property to the Buyer's site;
  - 11.4.2. any physical conditions on site which differ from the physical conditions which could reasonably have been anticipated by the Company at the time of preparation of the Quotation, including contamination, hidden services or ground conditions, if the Company had inspected all written information made available by the Buyer to the Company before the Quotation date;
  - 11.4.3. subject to **clause 9.1**, the highest standard, highest quality or standard, or the more onerous obligation in the parts of the Specification provided by the Buyer;
  - 11.4.4. Change in Law; or
  - 11.4.5. obtaining Approvals by the Company.
- 11.5. Unless specified to the contrary in the Contract, if any of the circumstances identified in **clause 11.4** occur and result in an increase in the cost to the Company of performing the Maintenance Services, the Company is entitled to claim the additional costs and the Buyer must pay those costs.
- 11.6. Unless expressly stated otherwise in the Contract Particulars, the Price excludes GST.

## 12. Escalation

- 12.1. The Price (including any rates or fees forming the Price) shall be fixed until the date stated in the Contract Particulars, or where no date is stated in the Contract Particulars until the first 30<sup>th</sup> June after the Commencement Date.
- 12.2. The Company shall be entitled to adjust the Price (including any rates or fees forming the Price) from the first day after the date in **clause 12.1** and again every twelve (12) months after. The Contractor shall provide its adjusted Price (including any rates or fees forming the Price) to the Buyer fifteen (15) days prior to the date in **clause 12.1** and again every twelve

(12) months after. The parties must use their best endeavours to mutually agree the increased Price (including any rates or fees forming the Price). If the parties cannot mutually agree on all or some of increased rate those that cannot be agreed upon shall be resolved under **clause 24**.

### 13. Invoicing and Payment.

- 13.1. The Company will invoice the Buyer for the Maintenance Services (including any Variations) performed and any other money that the Company becomes entitled to under the Contract at the completion of each item of maintenance work forming the Maintenance Services.
- 13.2. The Buyer must pay the Price, Variations, reimbursements, and any other money that the Company becomes entitled to under the Contract not later than the earlier of either:
  - 13.2.1. where a Security of Payment Act states a maximum period for payment to be made, that period; or
  - 13.2.2. unless the Contract states otherwise, thirty (30) days following the date of the invoice.
- 13.3. The Buyer must pay in the currency in which it is invoiced.
- 13.4. The Company may charge a surcharge on payments made by credit card to reimburse the cost of any bank or processing charges incurred by the Company in respect of the payment.
- 13.5. To the maximum extent permitted by law, the Buyer will be liable for all costs incurred with the recovery of any unpaid invoiced amounts, including without limitation legal and collection agents' fees, court costs, interest and the Company's fees for time incurred with the recovery process.
- 13.6. The Buyer is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Company, nor is the Buyer entitled to withhold payment of any invoice because part of that invoice is in dispute.
- 13.7. If the Buyer does not pay any amount owing to the Company by the due date for payment, the Company is entitled to charge default interest on the unpaid amount at an interest rate of the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* plus three (3) percent, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).

### 14. GST.

- 14.1. In this **clause 14**, a word or expression defined in the GST Law has the meaning given to it in that law.
- 14.2. All amounts payable under a Contract are exclusive of GST.
- 14.3. If a party makes a supply under or in connection with a Contract in respect of which GST is payable, the consideration for the supply but for the application of this **clause 14.3 (GST exclusive consideration)** is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made unless that consideration is stated to already include GST.
- 14.4. If a party must pay, reimburse or indemnify another party for a Loss, the amount to be paid, reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss, and then increased in accordance with **clause 14.3**.
- 14.5. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract.
- 14.6. A party need not make a payment for a taxable supply made under or in connection with a Contract until it receives a tax invoice for the supply to which the payment relates.

**15. Warranties and Defects.**

- 15.1. Subject to **clauses 15.2, 15.3 and 15.4**, the Company warrants to the Buyer that for the Warranty Period the Maintenance Services:
- 15.1.1. conforms with the Contract; and
  - 15.1.2. will be free from defects in workmanship under normal use and maintenance.
- 15.2. Goods purchased by the Company from a third party either for incorporation into the Maintenance Services by the Company or for sale to the Buyer are subject to warranty as applicable from the supplier to the Company. To the maximum extent permitted by law, the Company does not give any warranty with regard to such goods, but will provide reasonable assistance to the Buyer, at the Buyer's cost, to enforce the Buyer's rights against the supplier.
- 15.3. The Buyer must notify the Company of any Maintenance Services that the Buyer believes do not meet the warranties in **clause 15.1** stating the reasons or providing the evidence to support the Buyer's belief, and must allow the Company or its nominee to inspect the Maintenance Services within a reasonable time after such notification.
- 15.4. If, within the Warranty Period, the Company agrees that the Maintenance Services do not meet the warranties in **clause 15.1**, and provided the Buyer will return any goods to the Company, the Company must, at its option:
- 15.4.1. re-perform the Maintenance Services or pay the cost of their reperformance; or
  - 15.4.2. reimburse the Buyer the Price paid by the Buyer for the Maintenance Services.
- 15.5. Any re-performance by the Company will not extend the Warranty Period.
- 15.6. The Buyer acknowledges and accepts that it must firstly give the Company reasonable opportunity to rectify any part of the Maintenance Services that is not in accordance with the Contract before the Buyer can commence rectification either by the Buyer or its subcontractors, or the Buyer making any claim for a reduction in the Price or for any Loss.
- 15.7. The Company makes no other warranty to any person (including the Buyer) in relation to the Maintenance Services except those expressly set out in the Contract and those warranties which cannot be specifically excluded under law and the Company expressly excludes all other terms, conditions, warranties, undertakings, inducements or representations, whether expressly or implied or implied by statute.

**16. Insurance.**

- 16.1. The Company must maintain with a reputable insurance company throughout the term of the Contract:
- 16.1.1. public liability insurance written on an occurrence basis providing cover for the amount of \$20,000,000;
  - 16.1.2. product liability insurance written on an occurrence basis and in aggregate for the amount of \$20,000,000; and
  - 16.1.3. workers' compensation insurance appropriate to its activities in the form and amount required by law.
- 16.2. The Company shall provide copies of certificates of currency as evidence that it holds the insurance required under **clause 16.1** whenever reasonably requested by the Buyer.
- 16.3. The Company's liability for any deductible under any policy of insurance not required to be maintained by the Company under the Contract is limited in the aggregate to \$20,000.

**17. Liability and Indemnities.**

- 17.1. Notwithstanding any other clause in this Contract, to the extent permitted by law:
- 17.1.1. the Company has no liability to the Buyer under or in connection with this Contract for any indirect or consequential loss, economic, incidental or special loss or for

any loss of production or production stoppage, loss of profit or anticipated profit, loss of revenue or other form of consideration, loss of savings or anticipated savings, loss of use, loss of data, loss of contract or repudiation of contract, loss of goodwill or reputation or loss of business opportunity, business interruption, holding over or overhead loss, loss of future business or for any punitive or exemplary damages; and

17.1.2. the Company's total liability to the Buyer under any principle of law arising out of, or in relation to this Contract, is limited to the maximum extent permitted by law, to the greater of:

- (i) 10% of the Price paid by the Buyer for the completed Maintenance Services; or
- (ii) an amount equal to any amount which in respect of a claim:
  - (A) is paid to the Company (or for the Company's benefit) under the policy of insurance (including property damage) maintained by the Company under this Contract; or
  - (B) would have been paid under any such policy of insurance but for a breach by the Company of the terms and conditions of the insurance policy.

17.2. **Clause 17.1.2** above does not exclude or limit the Company's liability in respect of:

17.2.1. wilful misconduct, criminal act or fraud committed by the Company or any of the Company's employees or agents;

17.2.2. death or personal injury; or

17.2.3. liability, which by law the Company cannot contract out of.

17.3. The Company's liability shall be reduced proportionally to the extent that an act or omission of the Buyer or a breach of the Contract by the Buyer may have contributed to the claim, loss, expense or damage.

17.4. Each indemnity of the Buyer is a continuing obligation, separate and independent from the other obligations of the Buyer and survives the termination or expiration of this Contract. It is not necessary for the Company to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract. The Buyer shall pay on demand any amount it is obliged to pay to the Company under any indemnity in this Contract.

## 18. Intellectual Property.

18.1. Each party shall retain ownership of any existing or created intellectual property rights. Each party indemnifies the other from and against all claims by a third party for infringement of any intellectual property rights. Each party grants to the other a license to use their intellectual property rights to undertake and receive the benefit of the Maintenance Services.

## 19. Confidential Information.

19.1. The Company must:

19.1.1. take all reasonable steps to safeguard the confidentiality of the Confidential Information; and

19.1.2. not disclose, make public or use for purposes other than for the purposes of the Contract any Confidential Information of the Buyer without the prior written consent of the Buyer.

19.2. Any obligation of the Company under this **clause 19** will not be taken to have been breached if the confidential information was required to be disclosed by law or court order or required by any stock exchange, provided that the Company makes a reasonable effort to otherwise protect the confidentiality of such information.

## 20. Variations to the Maintenance Services.

- 20.1. The Buyer may, by written notice, request the Company to do any one or more of the following:
- 20.1.1. increase, decrease or omit any part of the Maintenance Services;
  - 20.1.2. change the character or quality of any Maintenance Services (including a change to any Specification);
  - 20.1.3. alter the program for the performance of the Maintenance Services;
  - 20.1.4. perform additional work; or
  - 20.1.5. to the extent that work relating to an event in **clause 11.4** is not included in the Price, carry out such work.

### (Variation).

- 20.2. If the Buyer requests a Variation, the Company must consider the request in good faith and notify the Buyer in writing whether or not the Company is willing to perform the Variation, and if so, provide a Variation Quotation with the following:
- 20.2.1. the cost (including any Preliminaries and time related costs); and
  - 20.2.2. the effect on any other obligation of the Company under the Contract, including the time to undertake the Maintenance Services and warranties.
- 20.3. The Company is entitled to claim the Company's reasonable costs of complying with **clause 20.2** and the Buyer must reimburse the Company the costs claimed.
- 20.4. The Buyer and the Company must first use their best endeavours to agree upon the cost and the effect on any other obligation of the Company under the Contract of the Variation prior to the Company commencing to perform the Variation.
- 20.5. Where the Variation is for an increase, the Company will be entitled to a mark-up of not less than 15% on the cost of the Variation for Off-site Overheads and profit.
- 20.6. Where the Variation is a deduction there shall be no reduction of the Off-site Overheads or profit.
- 20.7. A Variation will not be binding on the parties unless and until:
- 20.7.1. the parties have agreed in writing on the cost and the effect on any other obligation of the Company under the Contract of the Variation; or
  - 20.7.2. the Buyer has accepted the Variation Quotation in writing.
- 20.8. Unless and until the requirements of **clause 20.7** are satisfied, the parties remain bound by the Contract, without the Variation.

## 21. Subcontracting and Assignment.

- 21.1. The Company reserves the right to subcontract any part of the Maintenance Services without the Buyer's consent.
- 21.2. Neither party may assign this Contract or any payment or otherwise transfer its rights under the Contract without prior notice to and consent from the other party, which consent must not be unreasonably withheld.

## 22. Suspension and Termination.

- 22.1. If the Buyer has not complied with the terms of payment pursuant to **clause 13**, or the Company has reasonable evidence that the Buyer is trading insolvent, the Company may suspend the performance of its obligations under the Contract until the Buyer has complied with **clause 13**, or the Buyer has provided evidence acceptable to the Company that the Buyer is not trading insolvent, by giving written notice to the Buyer that the Company has suspended its obligations pursuant to this clause.

- 22.2. The Company shall recommence its obligations under the Contract within 2 Business Days of Buyer complying with **clause 13** or providing evidence acceptable to the Company. The Company is entitled to claim any reasonable costs of the Company due to the suspension (including escalation costs) and the Buyer must reimburse the Company the costs claimed.
- 22.3. If after 10 Business Days of the Company giving a notice pursuant to **clause 22.1**, the Buyer has not complied with **clause 13** or provided evidence acceptable to the Company, the Company may terminate the Contract by written notice to the Buyer.
- 22.4. The Company may terminate the Contract by written notice to the Buyer if the Buyer is otherwise in breach of any of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Company requesting the breach be remedied, or by its nature cannot be remedied.
- 22.5. The Buyer may terminate the Contract by written notice to the Company if the Company becomes insolvent; or the Company commits a material breach of the Contract and fails to remedy the breach within 20 Business Days (or a period otherwise agreed between the parties) after receipt of written notice from the Buyer requesting the breach be remedied.
- 22.6. Without limiting any other remedy available to the Company, to the maximum extent permitted by law:
- 22.6.1. the Buyer must pay for all parts of the Maintenance Services performed prior to the termination of the Contract; and
- 22.6.2. if the Contract is terminated by the Company under **clause 22.3** or **22.4**, the Buyer must indemnify the Company from and against all claims, and any Loss incurred by the Company arising out of or in connection with the termination.

### 23. Service of Notices.

- 23.1. A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
- 23.1.1. in writing, in English and signed by a person duly authorised by the sender; and
- 23.1.2. marked for the attention of the representative of the other party for the Contract, and hand delivered or sent by prepaid post or email to the representative's address applicable at the Commencement Date, as varied by any Notice given by the representative to the sender.
- 23.2. Communications by email need not be marked for the attention in the way required by **clause 23.1.2**. However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.
- 23.3. A Notice given in accordance with **clause 23.1** takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- 23.3.1. if hand delivered, on delivery;
- 23.3.2. if sent by prepaid post, six Business Days after the date of posting (or fourteen Business Days after the date of posting if posted to or from a place outside the country of delivery); or
- 23.3.3. if sent by email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered,

but if receipt is not on a Business Day or is after 5.00pm on a Business Day (in the time zone of the addressee), the Notice is taken to be received at 9.00am on the next Business Day.

### 24. Disputes.

- 24.1. If either party considers a dispute has arisen under this Contract, it may issue a dispute notice to the other party which sets out the details of the dispute. In the event of a dispute, a senior representative from each party with authority to resolve the dispute must meet and use genuine efforts to resolve the dispute. If no agreement is reached within 20 business days after a dispute notice is issued, the dispute is referred to mediation. If the parties

cannot agree upon a mediator within twenty (20) business days of the dispute being referred, the parties agree that Resolution Institute shall appoint a mediator and the Resolution Institute Mediator Rules shall apply. If part or all the dispute remains unresolved following mediation, either party may commence legal proceeding but only in regard to those parts of the dispute that remain unresolved. Despite the existence of a dispute between the parties, the parties must continue to perform their obligations under the Contract.

**25. Drawings and Information.**

- 25.1. Unless the Contract provides otherwise, all drawings and information issued by the Company remain the property of the Company and may not be distributed or copied without the Company's permission.
- 25.2. All drawings, descriptive and shipping specifications, performance claims and capability claims given by the Company in the Quotation or contained in any catalogue, website or other publication are approximations only, do not form part of the Contract and the Company does not warrant the accuracy or completeness of any such information, unless expressly guaranteed in the Contract.

**26. Force Majeure**

- 26.1. The Company will not be liable for failure to perform any, or all, of its obligations under the Contract to the extent, and for so long as, its performance of the obligations is prevented or delayed by a Force Majeure Event provided that the Company:
  - 26.1.1. gives notice to the Buyer of the Force Majeure Event and the obligations of the Company being prevented or delayed; and
  - 26.1.2. recommences the obligations that were prevented or delayed as soon as practical after the obligations cease to be prevented or delayed.

**27. Deed of Guarantee, undertaking and substitution**

- 27.1. The Buyer shall have no entitlement to request, and the Company has no liability to execute any deed of guarantee, undertaking and substitution, or other similar document.

**28. Prior Works**

- 28.1. The Terms and Conditions shall apply to any work performed by the Company in connection with the Maintenance Services even if it was performed prior to the Commencement Date.

**29. Governing law and jurisdiction**

- 29.1. The Contract will be governed by and construed in accordance with the laws in force in the state in which the Order Confirmation is issued, or if no Order Confirmation is issued, Victoria.

**30. Privacy.**

- 30.1. Each party must comply with its obligations under the Privacy Laws. The Company will deal with personal information in accordance with its published privacy policy.

**31. Amendment**

- 31.1. This Contract may not be amended or varied unless the amendment or variation is in writing signed by all parties.

**32. Waiver**

- 32.1. Waiver of any power or right under this Contract by the Company must be in writing signed by the parties and is effective only to the extent set out in that written waiver.
- 32.2. The failure of the Company at any time to require full or partial performance of any provision of the Contract will not affect in any way the full right of the Company to require that performance of that provision subsequently.

32.3. The waiver by any party of a breach of a provision of the Contract will not be deemed a waiver of all or part of that provision or of any provision or of the right of that party to avail itself of its rights subsequently.

**33. Third Parties**

33.1. Nothing in the Contract confers or purports to confer on any third party any benefit or rights to enforce any term of the Contract.

**34. Survival**

34.1. Provisions of the Contract which by their nature, are intended to survive, survive termination or expiry of the Contract.

**35. Severance**

35.1. The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result.

35.2. If, despite the application of this clause, a provision of this Contract is illegal or unenforceable:

35.2.1. if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed; and

35.2.2. in any other case, the whole provision is severed,  
and the remainder of this Contract continues in force.

**36. Rights, remedies additional**

36.1. Any rights and remedies that a person may have under this agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.