

Terms and Conditions for the Provision of Goods and/or Services

1.0 Definition and Interpretation

The following words have these meanings in these Conditions unless the context provides otherwise:

"Agreement" means the agreement between Practical Engineering Investments trading as, Practical Engineering Australia (PEA) and the Customer consisting of the Offer and these Conditions;

"Additional Goods and Services" means any Goods and/or Services requested by the Customer in addition to those set out in the Offer;

"Affiliate" of a party shall mean a corporation, company or other entity, now or in the future, directly or indirectly,

- (a) Owned or Controlled by the party, or
- (b) Owning or Controlling the party, or
- (c) Owned or Controlled by the same corporation, company or other entity as the party;

"Australian Consumer Law" means the Australian Consumer Law set out in schedule 2 of the Competition and Consumer Act 2010 (Cth);

"Authorisation" means an approval, consent, declaration, direction, exemption, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any Law and includes any renewal or amendment;

"Business Day" means Monday through Friday (inclusive) excluding gazetted public holidays in the State or Territory where the Site is located;

"Change of Law" means the enactment, adoption, promulgation, modification, determination, Authorisation or repeal (including any change in interpretation or application by competent authorities), of, or in respect of, any Law which occurs after the date of Practical Engineering Australia's Offer;

"Commencement Date" means the earlier of the commencement date set out in the Offer, or if none is stated, then the date that Practical Engineering Australia confirms the Customer's order or the date that Practical Engineering Australia commences provision of the Services or the Supply of the Goods;

"Conditions" means the Terms and Conditions for Goods and/or Services set out in this document;

"Confidential Information" means information (in any form) which is by its nature confidential, is designated by a part to be confidential, the recipient knows or ought reasonably to know is confidential, information comprised in or relating to IP Rights, information relating to the business, computer systems or affairs of either party, the content of any correspondence, discussions, negotiations, and agreements between any of the parties and the existence of such correspondence, discussions, negotiations and agreements;

"Contract Price" means the price payable by the Customer to Practical Engineering Australia for the Goods and Services as specified in the Agreement as may be varied in accordance with the Agreement and where applicable may be calculated using the Schedule of Rates;

"Control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether:

- (a) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board
- (b) of directors, or a similar managing authority;
- (c) by contract; or
- (d) otherwise.

"Client" means the person for whom or which work under the Agreement is performed;

"Customer Representative" means the person who has authority to represent the Customer under the Agreement;

"Consumer" has the meaning given in Section 3 of the Australian Consumer Law. The Customer will be acquiring the goods/services as a Consumer if:

- (a) The amounts paid or payable for the goods does not exceed \$40,000; or
- (b) The goods are of a kind ordinarily acquired for personal domestic
- (c) or household use or consumption;

Notwithstanding the above, the Customer will not be acquiring goods and/or services as a Consumer if the Customer acquires the goods and/or services:

- (a) For the purposes of re-supply; or
- (b) For the purposes of using them up and transforming them, in trade or, commerce
 - i. In the course of a process of production or manufacture; or
 - ii. In the course of repairing or treating other goods or fixtures on land;
- (c) The goods are of a kind ordinarily acquired for personal domestic or household use or consumption;

"Defect" means an error or defect in the Goods and Services, due to faulty material or workmanship for which Practical Engineering Australia is responsible;

"Defects Liability Period" has the meaning set out in clause 15;

"Delivery Date" means the final date by which the Services must be performed and the Goods must be delivered under the Agreement;

"Equipment" means any equipment at the Site upon which the Services will be performed;

"Emergency Breakdown Equipment" means equipment owned by Practical Engineering Australia for temporary replacement of non-functioning equipment;

"Force Majeure Event" means any event beyond the reasonable control of a party including the following events:

- (a) Acts of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, revolution, insurrection, military or usurped power or terrorism;
- (b) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (c) Contamination caused by any hazardous or toxic materials or waste (including asbestos) existing on the Site prior to the date of the Agreement or brought onto the Site after this date by or on behalf of the Customer (other than contamination caused by Practical Engineering Australia or Practical Engineering Australia's Personnel);
- (d) Shipping congestion at port of loading/unloading, blockages, embargos, shortage of transport, import restrictions or currency restrictions;
- (e) Act (or failure to act) of authorities (unless such act is the requirement of authorities to either party to comply with any mandatory Law in force at the time of signature of the Agreement), non-approval of export licence for the work under the Agreement, or epidemic, Change of Law;
- (f) Sabotage, strikes, lockouts, go-slow or any other industrial dispute or disturbance; and
- (g) Acts of God including all severe weather conditions, natural disasters, earthquakes, volcanic activity, hurricanes, cyclones, floods, fires, tsunamis and lightning strikes;

"Goods" means the goods to be supplied by Practical Engineering Australia under this Agreement, as specified in the Offer (including any Additional Services and On Site Spares) as may be varied by the parties in writing from time to time;

"GST" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulations made pursuant to the Act;

"Insolvency Event" means:

- (a) in relation to a company, that the company: (i) is insolvent; (ii) has an administrator, controller, liquidator, provisional liquidator; receiver, receiver and manager, mortgagee in possession or other like offer appointed to it or over all or any of its assets; (iii) experiences any analogous event having a substantially similar effect; and
- (b) in relation to an individual, that he or she: (i) is insolvent; (ii) enters into a debt agreement or personal insolvency agreement; or (iii) commits an act of bankruptcy or is bankrupt;

"IP Rights" means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered) in relation to inventions (including patents), trademarks, designs, copyright, circuit layout rights, trade secrets, know-how and confidential information and all other rights of a proprietary nature created as a result of intellectual activity in the industrial, scientific, literary and artistic fields;

"Law" means any applicable statute, rules, regulations, by-laws, codes, standards, ordinances, licences, orders, official policies, directions, requests, requirements, Authorisations and guidelines in force from time to time, whether made by a State, Territory, the Commonwealth or local government or by regulatory departments, bodies, instrumentalities, Ministers, agencies, or statutory authorities;

"Major Failure" in respect of goods, has the meaning defined in section 260 of the Australian Consumer Law, and in respect of services, has the meaning defined in section 268 of the Australian Consumer Law;

"Order" means a written order for Goods and Services from the Customer in accordance with an Offer, in the form required by Practical Engineering Australia from time to time;

"On Site Spares" means those spares held on Site by the Customer including those held on consignment from Practical Engineering Australia;

“PEA” means Practical Engineering Australia (ABN 40 631 974 117) that submits Practical Engineering Australia’s Offer;

“PEA’s Offer” means a written offer by Practical Engineering Australia to perform the work under this Agreement;

“PEA’s Personnel” mean all persons engaged by Practical Engineering Australia to perform the work under the Agreement;

“PPSA” means the *Personal Property Securities Act 2009* (Cth);

“Response Times” means the response times if any set out in the Offer;

“Restricted Site Access” refers to the situation where Practical Engineering Australia is not able to access the Site to commence work or deliver the Goods;

“Schedule of Rates” means Schedules of charging rates calculated on an hourly or other basis as set out in the Offer and varied in accordance with the Agreement;

“Services” means the Services to be provided by Practical Engineering Australia to the Customer under the Agreement, as specified in the Offer (including any Additional Services) as may be varied by the parties in writing from time to time;

“Services Materials” means material and equipment brought onto Site by Practical Engineering Australia for use in performing work under this Agreement and includes, without limitation service manuals, schematics, (a) diagnostics software, tools and parts;

“Site” means the premises at which Practical Engineering Australia is to perform the work under this Agreement.

“Software” means any software supplied by Practical Engineering Australia to the Customer for use in or in connection with the Goods and Services and includes, as applicable: (a) the machine-executable object code version of the software; (b) any microcode (firmware) embedded in the Goods and Services; (c) any related user documentation; and (d) any adaption, copy, derivation, development, enhancement, improvement, modification, translation, Update or Upgrade of that software;

“Update” means any software supplied by Practical Engineering Australia which has been produced primarily to overcome defects in, or to improve the operation of the Software (including bug fixes and patches) without significantly improving the functionality or performance of that software; and

“Upgrade” means any software supplied by Practical Engineering Australia which has been produced primarily to extend, alter or improve the Software, by providing additional functionality or performance enhancements;

“Taxable Supply” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“Taxes” means all taxes including without limitation GST, excise duties, stamp duties, customs duties and other government charges, imposts and levies; and

“Term” means the term of the Agreement as set out in the Offer, (or if no term is stated, 12 months) as extended or terminated in accordance with the Agreement.

1.1 Interpretation

In the Agreement, unless otherwise indicated to the contrary:

- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word “includes” or “including” shall be interpreted to mean “includes” or “including” without limitation;
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a reference to “\$” or “dollars” is to Australian dollars;
- (f) a reference to a party to this Agreement or another agreement or document includes the party’s successors, permitted substitutes and permitted assigns (and, where applicable, the party’s legal personal representatives);
- (g) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- (h) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time;
- (i) (if a payment or other act is required to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day; and
- (j) a reference to a ‘person’ includes a firm, partnership, joint venture, association, unincorporated body, corporation or other entity.

1.2 PEA’s rights and remedies

Practical Engineering Australia rights and remedies in this Agreement are in addition to those conferred by Law.

2.0 Offer, Acceptance and Variations

2.1 Offer and acceptance

These Conditions form part of the Offer in which they are referred to or to which they are attached. Notwithstanding any acceptance by Practical Engineering Australia of any order from the Customer that may contain any provision inconsistent with or purporting to vary or reject any of these Conditions, any contract arising from any such acceptance shall be subject to these Conditions unless and to the extent only that Practical Engineering Australia expressly agrees in writing to any variation.

Unless previously revoked by written notification to the Customer, the Offer shall remain valid for the period stated in the Offer or, if no period is stated, for thirty (30) days from its date.

2.2 Variations

The Customer may request Practical Engineering Australia to vary the work to be performed by Practical Engineering Australia under the Agreement to an extent contemplated by, can capable of being carried out under, the provisions of the Agreement. Practical Engineering Australia shall as soon as practicable after receiving such a request notify the Customer:

- (a) whether the proposed variation can be effected; and
- (b) if it can be effect:

- (i) Practical Engineering Australia’s offer including its quote for the cost of performing the proposed variation, including any delay or disruption costs and payment terms; and
- (ii) Practical Engineering Australia’s estimate of the impact of the variation on the Delivery Date.

If the Customer accepts Practical Engineering Australia’s Offer for the proposed variation, Practical Engineering Australia shall perform the variation and the cost shall be added to or deducted from the Contract Price. The Delivery Date shall be extended as a result of any delay incurred by Practical Engineering Australia due to the performance of the requested variation.

3.0 Specifications and drawings

3.1 Not Part of Agreement

Unless expressly agreed in writing all descriptions, specifications, drawing, dimensions and weights submitted with Practical Engineering Australia’s Offer are approximate only. All descriptions, illustrations and data contained in catalogues, price lists and other promotional material are only intended to present a general idea of the products described and do not form part of the Agreement.

3.2 Provision of necessary information

The Customer shall, within 7 days from the date of the Customer’s order, provide Practical Engineering Australia with all information and other things reasonably required by Practical Engineering Australia from the Customer to enable work under the Agreement to start and be carried out without delay or interruption, otherwise clause 17(e) shall apply.

3.3 Approval of Drawings

Drawings or other information requiring the Customer’s approval shall be approved, amended or rejected and returned to Practical Engineering Australia within 7 days of the date of receipt (or within such other time period as may be agreed in writing by Practical Engineering Australia), otherwise clause 17(e) shall apply.

3.4 Incorrect information

The Customer shall be responsible for and bear the cost of any alteration to the Goods and Services necessitated by any discrepancy, error or omission in any drawings, specification or other information supplier or approved by the Customer.

3.5 Responsibility for Authorisations

In the absence of any agreement to the contrary, the Customer shall be responsible for obtaining and providing all Authorisations necessary for performance of the Agreement at the Customer’s cost.

4.0 Services

- (a) Practical Engineering Australia will perform the Services during the Term, commencing on the Commencement Date.
- (b) Hours of service are as described in the Offer or are otherwise Practical Engineering Australia’s normal working hours. If Practical Engineering Australia performs Services outside its normal working hours, then it may charge the Customer for any additional costs in accordance with the Schedule of Rates or, if no Schedule of Rates applies then at reasonable rates and prices.
- (c) Practical Engineering Australia will perform all Services under the Agreement in accordance with Practical Engineering Australia’s occupational, health, safety and environment policies and procedure. Any costs associated with specialist safety equipment or requirements shall be paid by the Customer.
- (d) The Customer may request Practical Engineering Australia to provide Additional Services and if Practical Engineering Australia agrees to perform them, the Agreement will also govern those Additional Services.

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- (e) Practical Engineering Australia will use reasonable endeavours to provide the Services within the Response Times (if any)
- (f) The Services only include those Services set out in the Offer and any agreed Additional Services. Unless otherwise agreed, the following services are not included in the Contract Price and, if Practical Engineering Australia agrees to perform them, may be charged as Additional Services:
 - i. correction of faults caused by lightning damage or electromagnetic interference;
 - ii. correction of faults caused by misuse, negligence or failure to observe the instructions for the Equipment or by unauthorised modifications or alterations to the Equipment;
 - iii. the correction of faults caused by matters external to the Equipment such as those resulting from any failure or fluctuation of the electricity supply and any other fault which is not the result of fair wear and tear;
 - iv. the provision of more than one specialist engineer who, due to the circumstances, are required to attend the Site, diagnose the fault and perform repair Services;
 - v. replacement of consumable materials such as batteries for the Equipment;
 - vi. any alterations or extensions to the Equipment requested by the Customer; and
 - vii. civil or structural defects or faults in the Equipment or catastrophic failure including catastrophic failure of large rotating plant.

5.0 Information and Communication

- (a) The Customer must at such times as reasonably advised by Practical Engineering Australia, furnish to Practical Engineering Australia sufficient information to enable the work under the Agreement to proceed promptly and without interruption.
- (b) The Customer must be responsible for the accuracy and completeness of the information supplied by the Customer and its representatives. In the event of any error or omission in this information supplied, the Customer shall be responsible and shall bear the cost of any alteration or variations required to the work under the Agreement.

6.0 Ownership of Intellectual Property Rights

6.1 Ownership of Intellectual Property Rights

Ownership of all Intellectual Property Rights developed, subsisting or created by Practical Engineering Australia in connection with the Goods and Services and Software (including without limitation any training materials, sketches, designs, reports, plans, drawings, specifications, samples, models, patterns, photographs, graphics, logos, artworks, documents, patents or records) shall remain the exclusive property of Practical Engineering Australia or Practical Engineering Australia's third party suppliers or licensors. Practical Engineering Australia grants to the Customer a non-transferable and non-exclusive licence to use such Intellectual Property Rights for the sole purpose of operation and maintenance of the specific Customer facility or Goods (as the case may be and including any Additional Goods) that is the subject of this Agreement. The Customer shall promptly execute, at the request of Practical Engineering Australia, all documents and do all such other acts as may be necessary to give effect to this clause.

6.2 Indemnity

- (a) Practical Engineering Australia shall indemnify the Customer against any claims which the Customer is legally liable for, in respect of any infringement of a third party's copyright or registered design, trademark or patent, the specification of which is published prior to the date of Practical Engineering Australia's Offer, relating to any part of the work supplied by Practical Engineering Australia (except if the part is based on a design specified by the Customer, or if the claim is due to use of the part not in accordance with the Agreement or use or the part in conjunction with goods not supplied by Practical Engineering Australia) ("Infringing Part"). Practical Engineering Australia obligation to indemnify the Customer against claims is subject to the Customer:
 - i. giving Practical Engineering Australia prompt written notice of the claim;
 - ii. not making any admission or prejudicing Practical Engineering Australia defence of claim or Practical Engineering Australia's ability to negotiate a satisfactory settlement;
 - iii. allowing Practical Engineering Australia the opportunity to control (at Practical Engineering Australia's expense) the conduct of the defence and any negotiations for the settlement of the claim; and
 - iv. giving Practical Engineering Australia (at Practical Engineering Australia's expense) such assistance and information as may

reasonably be required by Practical Engineering Australia to assist Practical Engineering Australia with the conduct of the defence and any negotiations for the settlement of the claim.

- (b) Practical Engineering Australia's obligation to indemnify the Customer under the Agreement shall be reduced to the extent that:
 - i. an act or omission of the Customer (or of the Customer's employees, officers, agents, consultants or other contractors), has contributed to the loss or damage; and
 - ii. the Customer has failed to mitigate its loss; and shall cease two years after the earlier of termination or expiry of the Agreement or completion of work under the Agreement.

6.3 Remedies

- (a) Practical Engineering Australia shall, at its option, either replace or modify the Infringing Part with a non-infringing part or procure for the Customer the right to use such Infringing Part.
- (b) The remedies set out in this clause 6 shall be the sole and exclusive remedy of the Customer and represent the full extent of Practical Engineering Australia's liability for infringement of intellectual property rights.

6.4 Warranty by Customer

- (a) The Customer warrants that use by Practical Engineering Australia of any design materials, documents and methods of working provided or directed by the Customer to enable Practical Engineering Australia to perform work under the Agreement, will not cause Practical Engineering Australia to infringe any third party's intellectual property rights and the Customer will indemnify Practical Engineering Australia upon request for any loss or damage incurred by Practical Engineering Australia in connection with such infringement.

7.0 Contract Prices and Payment

7.1 Contract Price

The Contract Price quoted by Practical Engineering Australia is based on the quantity and scope of work specified in Practical Engineering Australia's Offer and any minimum order values stated in Practical Engineering Australia's Offer shall apply. If there is any variation in the quantity or scope ordered from that offered, Practical Engineering Australia may adjust the Contract Price accordingly. If Practical Engineering Australia's Offer states that any portion of the Contract Price is subject to adjustment after a specified reference date due to foreign exchange variation, rise and fall or any other circumstance and the provision sets out the mechanism for calculating such adjustment, then Practical Engineering Australia may adjust the Contract Price in accordance with such provision.

On each anniversary of the Commencement Date, Practical Engineering Australia may review the Contract Price and Schedule of Rates which will be applicable for the next 12 months.

7.2 GST and Taxes

- (a) Unless otherwise stated in the Offer, the Contract Price is strictly net. The prices offered are exclusive of Taxes, which the Customer must pay in addition to the payment of other amounts due and owing under the Agreement. If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply will be the amount payable in accordance with the Agreement plus GST. Practical Engineering Australia and the Customer must provide each other with all documentation, including a Tax Invoice required to claim any Input Tax Credit, set-off, rebate or refund for or in relation to any GST included in any payment made under the Agreement.
- (b) In this clause, "GST", "Input Tax Credit", "Tax Invoice" and "Taxable Supply" have the meaning given them in the GST Law.

7.3 Change of Law

If after the Commencement Date, the cost to Practical Engineering Australia of performing the works under this Agreement is varied due to any Change of Law, the amount of such variation shall be added to or deducted from the prices charged under the Agreement, whichever the case may be. If the Change of Law causes delay to Practical Engineering Australia, then the time for performance of Practical Engineering Australia's obligations shall be extended by a period of time equal to the period of the delay.

7.4 Invoicing

- (a) Unless otherwise agreed between the parties in writing, Practical Engineering Australia may issue milestone or periodic invoicing to the Customer upon delivery of the Goods to Site and/or performance of the Services.
- (b) Practical Engineering Australia may invoice the Customer for any variations or additional work requested by the Customer at the times agreed in writing between Practical Engineering Australia and the Customer or any other reasonable time.
- (c) Where any other amount are payable by Practical Engineering Australia pursuant to the Agreement, Practical Engineering Australia may invoice such amounts as and when they occur.

7.5 Payment terms and credit facilities

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- (a) Unless otherwise agreed between the parties in writing, the Customer shall pay all amounts invoiced by Practical Engineering Australia prior to receipt of deliverables
- (b) Practical Engineering Australia may provide credit facilities in its discretion. Practical Engineering Australia reserves the right to withdraw credit facilities at any time prior to delivery.
- (c) Payment shall become due immediately upon the Customer suffering an Insolvency Event.

7.6 Payment when delivery of Goods is delayed

If delivery of any Goods is delayed by the Customer or the Customer's agents, consultants, employees, officers, representatives or other contractors, then payment of the full Contract Price for the delayed Goods shall be made by the Customer to Practical Engineering Australia within 30 days after notification by Practical Engineering Australia that the work under the Agreement was ready to be performed.

7.7 Delay or default in payment

Practical Engineering Australia may charge interest on amounts (at the rate of 3% above the 90-day Bank-accepted bills daily rate published by the Reserve Bank of Australia for the next Business Day after payment becomes due), calculated daily from the next Business Day after payment become due until the date of full and final payment of the overdue amounts. Any payment by the Customer shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the Contract Price.

8.0 Customer's Obligations

The Customer must:

- (a) give reasonable prior notice of the time when Practical Engineering Australia is required to be on Site.
- (b) promptly answer all queries and provide to Practical Engineering Australia complete and accurate information and documents that are necessary to enable it to provide the Goods and Services;
- (c) provide customs clearance and obtain and maintain any approvals, licences or permits that are necessary for the Goods and Services;
- (d) provide Practical Engineering Australia with access to Site and take all necessary measures (including scheduling of planned Services) to ensure that Practical Engineering Australia personnel are able to safely commence the work under the Agreement immediately upon their arrival at Site;
- (e) ensure that Practical Engineering Australia personnel have sufficient access to the equipment or Site to perform the work under the Agreement in an uninterrupted manner;
- (f) supply all necessary information with regard to the location of underground cables and pipes together with static data for structures;
- (g) whilst the Equipment is operating, maintain the environmental conditions specified by the manufacturer;
- (h) ensure that the personnel operating the Equipment are properly trained in its operation;
- (i) make no attempt to modify, alter or repair the Equipment unless otherwise agreed in writing by Practical Engineering Australia;
- (j) ensure that Practical Engineering Australia is provided with adequate secure storage space, free from condensation, dust and heat, for the storage of any Goods and tools;
- (k) maintain the Site in a safe secure condition to ensure compliance with the requirement of all applicable Laws, and Australian Standards for occupational, health, safety, environment and to properly induct all Practical Engineering Australia personnel to the Site;
- (l) provide adequate power supply, lighting of work areas and ventilation for the performance of the work under the Agreement;
- (m) provide Practical Engineering Australia with details of the Customer Representative; and
- (n) ensure the Customer Representative issues Practical Engineering Australia purchase orders confirming any verbal directions to proceed in respect of any Additional Services.

If the Customer does not comply with its obligations under this clause, then the Delivery Date and the time for performing the Services shall be extended until such time as the Customer's obligations are fulfilled and the Customer shall pay Practical Engineering Australia the reasonable costs incurred by Practical Engineering Australia due to such delays.

9.0 Services Materials

- (a) Unless otherwise stated in the Offer all Services Materials, with the exception of On Site Spares, retained or brought onto the Site under the Agreement are the property of Practical Engineering Australia.
- (b) The Customer acknowledges that the Services Materials may only be used by Practical Engineering Australia's personnel and are to be returned to Practical Engineering Australia upon termination of the Agreement but that Practical Engineering Australia has the right to remove such materials from the Site at any time.
- (c) The Customer acknowledges and agrees that parts replaced during performance of the work under the Agreement shall become the property of Practical Engineering Australia and it may dispose of such parts as it deems fit unless otherwise agreed in writing. Replacement parts used in the Services may be new or refurbished.
- (d) If Emergency Breakdown Equipment is made available by Practical Engineering Australia to the Customer, Practical Engineering Australia may at a later time replace the Emergency Breakdown Equipment with a permanent replacement or the repaired original Equipment or part.

10.0 Title and Risk

10.1 Passing of risk

- (a) Risk to the Goods shall pass to the Customer upon receipt at the delivery point (refer to Incoterm) and from then the risk of damage, deterioration or loss of or to the Goods from any cause whatsoever shall pass to the Customer. On Site Spares shall be at the Customer's risk at all times.

10.2 Passing of Title

Title and property in the Goods shall remain with Practical Engineering Australia, and the Customer holds the Goods as bailee and fiduciary agent, until such time as full payment is made to Practical Engineering Australia of all amounts due and owing by the Customer to Practical Engineering Australia.

10.3 Right of recovery

If the Customer fails to make payment of any amounts due and owing to Practical Engineering Australia, or an Insolvency Event occurs with respect to the Customer, then Practical Engineering Australia may recover the Goods. For that purpose Practical Engineering Australia's representatives may enter upon the premises where Practical Engineering Australia reasonably suspects the Goods are located in order to effect recovery. Practical Engineering Australia shall have the right to resell or otherwise dispose of the Goods so recovered without reference to the Customer.

11.0 Delivery Terms

11.1 Incoterm

Unless otherwise stated in the Agreement, the Goods are supplied Ex works PEA according to INCOTERMS 2010 (as amended from time to time) and delivery shall take place when the Goods are delivered at the delivery point. The Customer shall do everything necessary to take delivery of the Goods at the delivery point.

11.2 Storage

If after a period of 7 days from the date of notification that the Goods are ready for delivery, delivery is delayed for any reason beyond Practical Engineering Australia's reasonable control, Practical Engineering Australia may arrange for storage of the Goods at Practical Engineering Australia's premises or elsewhere. The Customer shall pay all associated costs including all applicable storage, insurance, demurrage and handling costs.

11.3 Partial deliveries

Practical Engineering Australia reserves the right to make partial deliveries and to separately invoice them unless otherwise agreed between the parties in writing.

12.0 Performance, Inspection and Tests

12.1 Performance

- (a) Practical Engineering Australia shall supply the Goods and perform the Services in accordance with the Agreement.
- (b) Any performance figures given by Practical Engineering Australia are based on Practical Engineering Australia's experience and are such as Practical Engineering Australia expects to obtain on testing. Subject to recognised tolerances applicable to such figures, Practical Engineering Australia shall not be liable if such figures are not attained unless Practical Engineering Australia has specifically guaranteed them in writing.
- (c) Where Practical Engineering Australia has agreed to performance figures but does not achieve such figures, that shall be regarded as a Defect and Practical Engineering Australia shall make good any such Defect in accordance with clause 15. Practical Engineering Australia liability, if any, shall in any case be limited as provided in clause 16.

12.2 Inspections and acceptance tests

- (a) If Practical Engineering Australia has agreed to perform any inspections or acceptance tests under the Agreement, they will be performed in accordance with Practical Engineering Australia's standard inspection and acceptance testing procedures and will be carried out at the place of manufacture or at another location at Practical Engineering Australia's option. Practical Engineering Australia shall bear the cost of performing any inspections and acceptance tests which Practical Engineering Australia specifies will be borne by Practical Engineering Australia in Practical Engineering Australia's Offer.
- (b) Practical Engineering Australia may agree to carry out additional inspections or acceptance tests requested by the Customer. If Practical Engineering Australia does so, the Customer shall bear the cost of such additional inspections and acceptance tests and the time for performance of Practical Engineering Australia's obligations shall be extended by a period equal to the time required to perform such additional inspections or acceptance tests.
- (c) If Practical Engineering Australia agrees to perform inspections or acceptance tests witnessed by the Customer, the Customer must arrange for a representative to attend the designated test site at the designated time. If the Customer does not do so, Practical Engineering Australia may proceed with carrying out the witnessed inspections and acceptance tests in the absence of the Customer's representative and such inspections and acceptance tests shall be deemed to have been made in the Customer's presence.
- (d) Practical Engineering Australia shall not be responsible for any expenses incurred by the Customer or the Customer's representative arising out of or in connection with any inspections or acceptance tests.
- (e) If during any such inspections or acceptance tests, Goods are found to have any Defect, Practical Engineering Australia shall make good such Defect (as if it had occurred during the Defects Liability Period) in accordance with clause 15. Practical Engineering Australia's liability, if any, shall be limited as provided in clause 16.
- (f) Goods will be deemed to have passed any inspections and acceptance tests and to have been accepted by the Customer if the Goods are put into commercial use.

13.0 Term

The Agreement shall be effective for the Term commencing on the Commencement Date. The Term shall be extended automatically for further periods of twelve (12) months on each anniversary of the Commencement Date, unless either party gives the other party 90 days' notice in writing prior to expiry of the term that it does not wish the Agreement to be renewed.

14.0 Suspension and Termination

14.1 Right to terminate

- (a) with immediate effect, by notice to the other party if the other party suffers an Insolvency Event; or
 Commits a material breach of the Agreement and fails to diligently pursue a proper course of action to remedy the breach within 21 days (or such longer period as is reasonable given the nature of the breach) after receipt of a notice from the non-defaulting party specifying the details of the breach and requesting remedy of same. Without limiting the foregoing, Practical Engineering Australia may also terminate the Agreement with immediate effect, by notice to the Customer, if the Customer has not paid an amount due and owing under the Agreement.
 Any action taken by Practical Engineering Australia under this clause shall not invalidate the Agreement or prejudice any of the rights, powers and remedies of Practical Engineering Australia, whether under the Agreement or otherwise at law.

14.2 Right to suspend

If any of the events referred to in clause 14.1 happen to the Customer, Practical Engineering Australia may elect to suspend the performance of the whole or any part of the remaining work to be performed under the Agreement. This suspension right is in addition to any other rights and remedies available to Practical Engineering Australia at Law. The Delivery Date shall be extended by a period equal to the period of any such suspension. The Customer shall pay Practical Engineering Australia all additional costs and expenses which are suffered or incurred by Practical Engineering Australia by reason of any such suspension.

14.3 Recourse of security

If the Customer has provided any security under the Agreement and Practical Engineering Australia exercises any rights under clause 14.1 Practical Engineering Australia may have recourse to any security given or monies paid by the Customer under the Agreement and apply this against the loss and/or damages incurred by Practical Engineering Australia as a result of having to exercise such rights.

14.4 Termination by the Customer for Practical Engineering Australia default

In case of termination by Customer for Practical Engineering Australia default under this clause, Practical Engineering Australia is only entitled to be paid the Contract Price for any Goods delivered and Services performed to be date of termination. This clause sets out the sole and exclusive rights and remedies of the Parties in such circumstances.

14.5 Termination by Practical Engineering Australia

In the event of termination by Practical Engineering Australia, the Customer shall pay to Practical Engineering Australia the Contract Price in full plus any additional costs and expenses reasonably incurred (including demobilisation costs and the cost of any Practical Engineering Australia's Personnel who become redundant because of the termination) less any savings due to such earlier termination. The Customer shall be entitled to obtain any fully completed work in its conditions at the point in time Practical Engineering Australia has received or as the case may be has issued the termination notice.

15.0 Defects Liability

15.1 Defects Generally

Subject to clause 15.5, Practical Engineering Australia shall rectify any Defects which occur during the Defects Liability Period, at its option, by repair, replacement or supply of equivalent Goods and Services (or by payment of the cost of doing so), provided always that:

- (a) the Customer notifies Practical Engineering Australia of the Defect in writing as soon as the Customer becomes aware of or should have become aware of the Defect;
- (b) the Goods and the equipment or system in respect of which the work under the Agreement have been carried out have been properly handled, used, operated and maintained in accordance with instructions issued by Practical Engineering Australia or if no instructions have been issued, in accordance with good industry practice;
- (c) such Defects are not caused by incorrect use of operating material or lubricants, faulty civil or mechanical work, unsuitable soil conditions or any other chemical, electrochemical and/or electrical influences which have not been provided for in the Agreement;
- (d) the Goods are not a consumable, not liable to deterioration or do not have a low rated service life;
- (e) no unauthorised repair or alteration to the Goods has been made (as applicable)
- (f) such Defects are not caused by the use of equipment and/or material supplied by the Customer; and
- (g) such Defects are not due to fair wear and tear, improper storage, excessive heating, mechanical vibration, overloading or contravention of prevailing standards and regulations applicable to electrical work.

15.2 Purchaser's obligations with respect to repair or replacement

Where the Customer has notified Practical Engineering Australia of an alleged Defect in accordance with clause 15.1, the Customer shall, at Practical Engineering Australia's request:

- (a) promptly return the Defective part to Practical Engineering Australia for repair; or
- (b) do those things necessary to enable Practical Engineering Australia to repair or replace the Defective part on behalf of the Customer (including giving Practical Engineering Australia access to any premises or sites where the Defective parts are located).

Unless otherwise agreed between the parties, the removal of Defective parts and the installation of any repaired, replacement or equivalent parts shall be performed by the Customer at the Customer's risk and expense. Where any Defective part has been replaced, that Defective part shall become the property of Practical Engineering Australia upon its removal. All replacement parts shall become the property of the Customer upon installation.

15.3 Exclusive remedy

To the extent permitted by Law and subject to clauses 15.5 to 15.7:

- (a) Practical Engineering Australia obligations to rectify Defects in accordance with this clause shall be the Customer's sole and exclusive remedy and represents the full extent of Practical Engineering Australia Liability for Defects; and
- (b) all representations, warranties and conditions of any kind, whether express or implied (including any warranties and conditions of merchantability and fitness for a particular purpose or arising from

a course of dealing or usage or trade) relating to the Goods and Services that are not contained in the Agreement are excluded.

15.4 Defects Liability Period

The Defects Liability Period:

- (a) for Services shall be 90 days from the date the Services is performed;
- (b) for Goods shall be 12 months after risk in the Goods has been transferred to the Customer; and
- (c) for software developed, provided or licensed under the Agreement shall be 60 days.

15.5 Implied conditions, warranties and consumer contracts

Nothing in this clause is intended to exclude any conditions, guarantees or warranties implied into the Agreement, or any remedies made available to the Customer, by provisions of the Australian Consumer Law or by any other Federal, State or Territory Laws to the extent that such implied conditions, guarantees, warranties or remedies may not be excluded by express agreement.

15.6 Where goods/services supplied to a Customer

In addition to the above, if any supply of Goods and/or Services under this Agreement to the Customer is a supply to a Consumer, then the following applies:

- (a) Practical Engineering Australia Goods and Services come with guarantee that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a Major Failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be acceptable quality and the failure does not amount to a Major Failure.
- (b) Practical Engineering Australia provides the Defect Liability Period cover under clause 15.1 in addition to the Customer's rights under the Australian Consumer Law. The Customer must make any claim under that cover by notifying Practical Engineering Australia in accordance with clause 15.1(a) in writing at the address set out under clause 15.6(c).
- (c) The Defects Liability cover is given by:
Name: Practical Engineering Australia (ABN 40 631 974 117)
Business Address: Kings Row Office Park, Building 1, Level 3, 52 McDougall St, Milton, QLD, 4064
Telephone Number: (07) 3875 2133
Email Address: sales@praceng.com.au
Practical Engineering Australia will pay the Customer's reasonable, direct expenses of claiming under this clause. The Customer shall submit details and proof of its expense claim to Practical Engineering Australia for consideration.

15.7 Supply to a Consumer of goods and services not ordinarily for personal, domestic or household use or consumption

If the Customer or deemed to be a "consumer" under the Laws referred to in clause 15.5 above, and the goods or services to be supplied by Practical Engineering Australia are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then Practical Engineering Australia liability for breach or any condition, guarantee or warranty implied by such Law shall to the extent permitted by such Laws be limited to:

- (a) In the case of goods – to the repair of the goods, or, at Practical Engineering Australia option, the replacement of the goods or the supply of equivalent goods or to the payment of the cost of repair, replacement or supply of equivalent goods; and
- (b) In the case of services – to the resupply of those services or payment of the cost of having those services resupplied.

16.0 Liability

16.1 Limitation of Liability

Notwithstanding any other provision of the Agreement and except to the extent that liability cannot be legally limited or excluded:

- (a) Practical Engineering Australia's total aggregate liability arising out of or in connection with the Agreement, shall be limited to the Contract Price (or such other amounts as agreed between the parties in writing) per event and in the aggregate and
- (b) Practical Engineering Australia shall under no circumstances be liable for economic loss; loss of contract; loss of profit or revenue; business interruption; loss of production; production stoppage; loss of information or data; loss of power, replacement power; cost of capital; loss of interest, damages based on the Customer's third party contracts; indirect or consequential loss or damage.

This limitation and exclusion of liability shall apply whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or indemnity, under statute, in equity or otherwise. Any and all liability of Practical Engineering Australia under or in connection with this Agreement shall cease with the expiry of the defects liability period specified in clause 15.4.

16.2 Third Party Benefit

Practical Engineering Australia holds the rights under clause for itself in its own capacity, and as agent of and trustee for its Affiliates, other contractors, subcontractors, consultants, employees, directors, officers, agents and suppliers ("Associates") respectively. For the purpose of this clause, each of the entities comprising the Associates must be treated to this extent as a party to the Agreement and may plead the Agreement as a bar to any claims by the other party under the Agreement.

17.0 Force Majeure and Delays

- (a) If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under the Agreement (other than payment obligations) then that party shall not be obliged to perform those obligations until it is no longer prevented from doing so and the time for performance of those obligations shall be extended by a period of time equal to the period of the delay.
- (b) If Customer suspends its obligations in this Agreement the Customer shall pay Practical Engineering Australia for all work performed until the giving of the suspension notice as well as for all additional cost reasonably incurred due to such suspension including but not limited to waiting time, demobilisation and remobilisation cost as well as cost for protecting the work. Practical Engineering Australia shall be entitled to take back the work and Customer shall be obliged to return the work upon Practical Engineering Australia's request. The taking back, the assertion of the retention of title or of a security interest or the taking possession through legal right or process of the work by Practical Engineering Australia shall not mean termination of the Agreement and restitution, unless expressly stated by Practical Engineering Australia.
- (c) If a party is prevented by the Force Majeure Event or suspension from carrying out its obligations for more than 180 days, either party may terminate the Agreement by giving written notice to the other party.
- (d) If a party terminates the Agreement under this clause, the rights and obligations of the parties will cease; and the accrued rights or remedies of each party will not be affected. Upon such termination, the Customer shall pay to Practical Engineering Australia:
 - i. all amounts due to Practical Engineering Australia for work carried out under the Agreement;
 - ii. the cost of materials and equipment reasonably ordered by Practical Engineering Australia for the work under the Agreement and which Practical Engineering Australia is liable to accept (including profit and overheads);
 - iii. Practical Engineering Australia's reasonable demobilisation costs including profits and overheads (if any); and
 - iv. 30% of the balance of the Contract Price payable.
- (e) If an act or omission of the Customer (or the Customer's agents, consultants, employees, officers, representatives or other contractors), a Change of Law, Restricted Site Access, Contamination or a Force Majeure Event causes delay to Practical Engineering Australia:
 - i. the time for performance of Practical Engineering Australia obligations shall be extended for a period of time equal to the period of delay; and
 - ii. the Customer shall pay to Practical Engineering Australia all additional costs including profits and expenses incurred by Practical Engineering Australia as a result of such delay including expenditure resulting from Practical Engineering Australia's Personnel being idle or standing by, Practical Engineering Australia's Personnel having to be retrenched or re-employed and Practical Engineering Australia's Personnel being required to perform work under the Agreement outside of Practical Engineering Australia's normal working hours or undertake additional travel.

18.0 PPSA

- (a) The Customer acknowledges that the Agreement constitutes a security agreement for the purposes of the PPSA. Practical Engineering Australia takes a security interest in all Goods supplied to the Customer under the Agreement securing the performance by the Customer of its obligations under the Agreement.
- (b) The Customer shall not create or cause to be created a security interest over, or in respect of its rights in, the Goods other than the security interest arising under the Agreement.
- (c) The parties contract out of the provisions of the PPSA allowed by section 115 of the PPSA to the following extent:
 - i. An exercise by Practical Engineering Australia of any right, power, or remedy, will be taken not to be under a provision mentioned in that section to the extent that the right, power or remedy is granted under any other Law or Statute or under

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these conditions unless Practical Engineering Australia so elects.

- ii. Any restrictions on the exercise by Practical Engineering Australia of a right, power or remedy or any obligation of Practical Engineering Australia to give notice, will not apply to the extent that the section so allows.
- (d) The Customer waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- (e) The Customer waives its rights to receive anything from Practical Engineering Australia under section 275 of the PPSA and agrees to not make any request of Practical Engineering Australia under that section.
- (f) For the avoidance of doubt, Practical Engineering Australia's security interest referred to in clause 19(a) also constitutes a security interest for the purposes of section 52(2) and 53 of the Competition and Consumer Act 2010 (Cth).

The Customer consents to Practical Engineering Australia perfecting its interest in any goods provided by Practical Engineering Australia to the Customer by registration under the PPSA and agreed to do anything reasonable by Practical Engineering Australia to enable it to do so.

19.0 Non-Solicitation

The Customer shall not, during the term of Agreement (and for a period of 12 months after expiry of the Term) directly or indirectly solicit or entice away (or attempt to solicit or entice away) for employment any person who is engaged by Practical Engineering Australia to perform works under this Agreement. The Customer shall indemnify Practical Engineering Australia upon demand against all loss, costs and expenses of any nature incurred by Practical Engineering Australia arising out of or in connection with a breach of this clause (including all costs incurred by Practical Engineering Australia to replace such person).

20.0 Dispute Resolution

20.1 Notice of Dispute

Any dispute of difference between the parties arising out of or in connection with the Agreement ("a Dispute") shall be notified to the other party by written notice of that Dispute, giving details of the subject-matter of the dispute ("Notice of Dispute").

20.2 Escalation of dispute

Upon the giving of a Notice of Dispute, the following shall apply:

- (a) The Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the parties (or their delegates);
- (b) If after twenty-one (21) days of the giving of the Notice of Dispute, the subject-matter of the Dispute has not been resolved between the Chief Executive Officers (or their delegates) to the satisfaction of both parties, the Dispute may be referred by either party to mediation. Mediation shall be conducted in accordance with the Rules for the conduct of commercial arbitrations of the Institute of Arbitrators & Mediators Australia. The mediator shall be a lawyer chosen by the parties and give his or her decision in writing and based on legal substance.
- (c) If the parties cannot agree on the choice of mediator within forty-two (42) days of the giving of the Notice of Dispute, the President for the time being of the Victorian Chapter of the Institute of Arbitrators & Mediators Australia shall appoint the mediator.

20.3 Award, seat and language

The award of such arbitration shall be final and binding on both parties in accordance with legislation applying to Commercial Arbitration and judgement thereon may be entered in any court having jurisdiction. The seat of arbitration shall be Brisbane, Queensland. The language to be used in the arbitration shall be English.

20.4 No relief from performance of other obligations

A reference to arbitration under this clause shall not relieve either party of any other obligations under the Agreement, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Agreement will be maintained.

21.0 Reservation

Practical Engineering Australia's obligation to fulfil the Agreement is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

22.0 Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable and undertaken to keep such Confidential Information secret, to procure that its representatives keep such Confidential Information secret and to preserve the confidential nature and secrecy of such Confidential Information in its possession.

23.0 Notice

23.1 Form of Notice

Any notice to be given under the Agreement shall be given in writing and delivered personally or sent by pre-paid post (airmail if to or from a place outside Australia) or emailed addressed to the other party at such address or emailed number as a party notifies the other for the purposes of this clause.

23.2 Service of notices

Any notice shall be deemed to be served:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, 3 days (7 if to or from a place outside Australia) after the date of posting; and
- (c) in the case of delivery by email read receipt.

24.0 General

24.1 Precedence

If there is any inconsistency between the documents comprising the Agreement, the following order of precedence shall apply (with the document referred to in clause 26.1(a) having the highest priority):

- (a) Practical Engineering Australia's order confirmation (if any);
- (b) any amendments to Practical Engineering Australia's Offer or the Conditions which have been agreed between the parties in writing;
- (c) Practical Engineering Australia's Offer (including all documents attached by Practical Engineering Australia or which Practical Engineering Australia agrees are incorporated by reference); and
- (d) these Conditions.

24.2 Severance

If the whole or any part of the Agreement is or becomes or is held to be illegal, invalid or unenforceable, then the whole and each part of the clauses of the Agreement shall (to the extent necessary to avoid such illegality, invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.

24.3 Assignment

The Customer shall not assign, pledge or transfer its interest in the Agreement (or any part of it) without obtaining Practical Engineering Australia's prior written consent. Practical Engineering Australia may assign, pledge or transfer its interest in the Agreement (or any part of it) to an Affiliate. Practical Engineering Australia may also assign to any person all or part of any debt owing by the Customer to Practical Engineering Australia.

24.4 Amendment

- (a) The Agreement may only be varied by written agreement between the parties;
- (b) No documentation, correspondence, verbal agreement or conversation shall part of, affect or modify any aspect of Practical Engineering Australia's Offer or the Agreement unless accepted and confirmed by Practical Engineering Australia in writing;
- (c) These Conditions shall apply to any separable portion of Practical Engineering Australia's Offer.

24.5 Governing Law and Jurisdiction

The Agreement, and to the extent permitted by law, each security interest (as defined by the PPSA) under it, shall be governed and shall be interpreted in accordance with the Laws of the State of Queensland, Australia (subject to clause 21) the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and to the appeal courts from them. The application of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (Vienna Convention) is excluded.

24.6 Entire Agreement

The Agreement constitutes the entire agreement between the parties as to its subject matter and the parties acknowledge that there are no other understandings, agreements, or representations whether express or implied in any way relating to the Agreement.

24.7 Waiver

No consent or waiver by a Party to or of any breach of any provision of the Agreement shall be construed as consent or waiver to or of any other breach of a provision of the Agreement.

24.8 Survival

Any indemnity or any other obligation of confidence under the Agreement is independent and survives termination of the Agreement. Any other term by its nature intended to survive termination of the Agreement will do so.