

# TERMS AND CONDITIONS

## Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074 306 255)

### GENERAL TERMS

The following general terms and conditions (being the General Terms) shall apply generally to any agreement for the supply of Goods, Training and Services between the Client and the Company for the duration of the agreement between the Client and the Company. Further terms that apply specifically in respect of any Training or Services to be provided by the Company to the Client are set out in Schedule 1 (Training Terms) and Schedule 2 (Service Terms) respectively.

#### 1. DEFINITIONS

In these Terms:

- (a) **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act.
- (b) **Business Day** means a weekday on which banks are open for normal banking business in the State or Territory in which the Company's office who is providing the particular Goods and/or Services is located (excluding any public holidays).
- (c) **Business Hours** means the period of 8.30am – 5.00pm on a Business Day.
- (d) **Change of Control** means in respect of a Client's business, the acquisition by another entity, person or corporation, either alone or together with any other entity, person or corporation of:
  - (i) more than fifty (50%) of the issued voting capital of the Client or its business entity;
  - (ii) more than fifty (50%) of the written down value of the assets of the Client or its business entity;
  - (iii) where the Client is a trustee of a trust, more than fifty percent (50%) of the issued interests in that trust or of the written down value of the assets of the trust.
- (e) **Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgement whether based in contract, statute or otherwise.
- (f) **Client** means the entity or person acquiring the Goods and/or Services upon these Terms.
- (g) **Company** means Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074 306 255), and its successors and assigns.
- (h) **Competition and Consumer Act** means the Competition and Consumer Act 2010.
- (i) **Credit Application Form** means the document entitled "Credit Application Form", or any other such similar form provided by the Company to the Client.
- (j) **Force Majeure Event** has the meaning given to that term in clause 13(b).
- (k) **Environmental Specifications** means the environmental specifications relating to each Good sold by the Company as notified by the Company.
- (l) **Equipment** means the General X-ray Systems, Digital Radiography General Systems, Fluoroscopy Systems, Mobile X-ray Systems, Cardiac Systems, OPG Systems, Mammography Systems, CR Systems and/or Laser Imagers (as applicable), or any other similar devices, which are acquired by the Client from the Company.
- (m) **Extended Warranty** has the meaning given to that term in clause 9(e).
- (n) **Extended Warranty Period** means the period for which the extended warranty applies which period is to be determined by the Company from time to time.
- (o) **Extended Warranty Price** means the price at which the extended warranty can be purchased from the Company which price is to be determined by the Company from time to time.
- (p) **Goods** means the goods sold to the Client by the Company, and includes (without limitation) the Equipment and consumables and small ex-warehouse goods in relation to the Equipment or otherwise.
- (q) **GST** has the meaning given to that term in the GST Law.
- (r) **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (s) **Handover Date** means the date specified in the document entitled "Customer Acceptance Form", or any other such similar form which details the Client's acceptance of the Goods and/or Services.
- (t) **Insolvency Event** means one or more of the following events:
  - (i) an application is made, or a resolution is passed, to wind-up the Client;
  - (ii) a controller or administrator is appointed in respect of the Client or any of its assets;
  - (iii) the Client suffers or commits an act of bankruptcy within the meaning of the Bankruptcy Act 1966 (Cth);
  - (iv) the Client dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason; or
  - (v) the Client is unable to pay its debts as and when they become due and payable.
- (u) **Installation Services** means the installation of the Goods at the Premises and any associated installation services provided pursuant to these Terms (including, without limitation, clause 1 of Schedule 2 of these Terms).
- (v) **Loan Equipment Form** means the form entitled "Shimadzu Loan / Demonstration Equipment Form" in substantially the same form as enclosed with these Terms.
- (w) **Maintenance Services** means the provision of the maintenance services pursuant to these Terms (including, without limitation, clause 2 of Schedule 2 of these Terms) and includes "Preventative Maintenance Services" where applicable.
- (x) **Non- Excluded Guarantees** has the meaning given to that term in clause 14.
- (y) **Premises** means the address(es) of the Client at which the Goods and/or Services are to be provided to the Client, as nominated by the Client prior to the Company providing the Goods and/or Services and as accepted by the Company.
- (z) **Prepared Site** means all works to provide any service utilities or appropriate building structure(s) as required for the provision of the Installation Services, including (without limitation) electrical power outlets and/or supply, data terminations, water outlets, drains, compressed air line, gas supplies, appropriate floor or ceiling or wall support structure and radiation shielding and the finishing of all necessary works, including (without limitation) painting, flooring, polishing, cabinetry and joinery, glazing, site clean and rubbish removal, have been completed by the Client at the Premises (at the Client's expense) so that the Company can provide the Installation Services, and as considered acceptable by the Company (acting reasonably).
- (aa) **Pre-Qualification Approval** has the meaning given to that term in clause 7(h) of these Terms.
- (bb) **Related Bodies Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).
- (cc) **Remote Maintenance Services** means the process by which the Company electronically logs into the Equipment via a computer device so as to diagnose any faults with the Equipment with a view to rectifying the faults remotely (to the extent possible).
- (dd) **Services** means the Installation Services, the Maintenance Services and/or the Remote Maintenance Services (as applicable).
- (ee) **Service Terms** means the terms and conditions that apply specifically to Services, as set out in Schedule 2 of these Terms.
- (ff) **State** means the State of New South Wales in the Commonwealth of Australia.

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- (gg) **Supply Date** has the meaning given to that term in clause 5(a)(i).
- (hh) **Terms** means the Company's standard terms and conditions of sale and supply as set out in this document (or any written variations to this document), unless the context otherwise requires and for the avoidance of doubt, includes the Training Terms and the Service Terms unless agreed or specified otherwise.
- (ii) **Training** means the training services to be provided by the Company to the Client in respect of the proper use, operation and care of the Goods supplied by the Company to the Client and any other services agreed to be provided by the parties.
- (jj) **Training Terms** means the terms and conditions that apply specifically to the provision of Training as set out in Schedule 1 of these Terms.

### 2. INTERPRETATION

In these Terms, unless specified to the contrary:

- (a) the background, the schedules, the execution page and the annexures (if any) are each incorporated in and form part of these Terms;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a given gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in these terms have a corresponding meaning;
- (e) a reference to a person includes a natural person, a company or other entities recognised by law;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision;
- (g) a reference to any governmental or statutory body includes any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
- (h) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (i) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (j) a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes fax transmission;
- (k) a reference to Australian dollars, dollars, \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia;
- (l) all references to parties are to the parties to these Terms;
- (m) a reference to a party includes the party's executors, administrators, successors and permitted assigns;
- (n) a reference to time is to local time in the capital city of the State;
- (o) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (p) if the time for performing an obligation under this agreement expires on a day which is not a Business Day, then time is extended until the next Business Day;
- (q) the language in all parts of these Terms shall be in all cases construed in accordance with its fair and common meaning and not strictly for or against any of the parties; and
- (r) specifying anything in these terms after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### 3. General

- (a) The Company agrees to sell and the Client agrees to purchase the Goods and/or the Services in accordance with these Terms.
- (b) These Terms shall apply to all Goods and/or Services sold by the Company to the Client unless otherwise agreed in writing by a duly authorised representative of the Company.
- (c) These Terms are deemed to be incorporated into all contracts for the sale of Goods and/or Services by the Company to the Client, and will prevail over any inconsistent terms in any document of the Client unless otherwise agreed by the Company in writing.
- (d) If the Client places an order with the Company for Goods and/or Services, enters into a contract with the Company, the Goods and/or Services are delivered or provided to the Client, or the Client makes any payment, the Client is taken to have accepted these Terms.

### 4. QUOTATION / ACCEPTANCE

- (a) All orders shall constitute an offer and shall be subject to acceptance by the Company. Orders cannot be modified or cancelled after acceptance by the Company except with the prior written consent of the Company.
- (b) A quotation is not an offer by the Company. The Company may withdraw or alter the quotation without notice.
- (c) Unless the Company withdraws it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of quotation.
- (d) Prior to the Company deciding whether to accept an order, the Client must provide the Company with confirmation as to whether the Client is to pay for the Goods and/or Services itself or via a third party financier.

### 5. GOODS

- (a) If the Client orders Goods, the Client must:
  - (i) in the case of all Goods other than Equipment, inspect the Goods provided by the Company immediately on supply of the Goods to the Client, and must within 5 Business Days after the date of supply the Goods (**Supply Date**) give written notice to the Company of any claim in the event that the Goods are defective, supplied in error, or if there are any discrepancies in the quantity delivered (including providing particulars of the claim); or
  - (ii) in the case of Equipment, inspect the Equipment provided by the Company by the Handover Date, and must within 5 Business Days of the Handover Date give written notice to the Company of any claim in the event that the Equipment is defective, supplied in error, or if there are any discrepancies in the quantity delivered (including providing particulars of the claim).
- (b) If the Client fails to give written notice to the Company pursuant to sub clause 5(a) above, then to the extent permitted by statute, the Goods are deemed to have been accepted by the Client in accordance with the provisions of these Terms.
- (c) The Company will use its best endeavours to fulfil any accepted orders for Goods, however if, the Company is not able to supply particular Goods which have been ordered by the Client, the Company may at its absolute discretion:
  - (i) supply to the Client similar goods, which in the opinion of the Company are an appropriate substitute, subject to the prior agreement of the Client; or
  - (ii) if the Client does not agree to the substitution, cancel the order for Goods.
- (d) The Client may not cancel an order for Goods or Equipment unless the Company first agrees in writing, and in any event the Company will not agree to cancel an order for Goods or Equipment unless the Client compensates the Company for all loss and damage arising from the cancellation.

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- (e) The Company may immediately cancel any order (in whole or in part) by notice to the Client and resell the Goods (to the extent title has not already passed to the Client) if the Client materially fails to comply with any of its obligations under these Terms or under an agreement for the sale of Goods, or if an Insolvency Event occurs in respect of the Client.
- (f) Upon cancellation of any order for the Goods (except under clause 5(c)), the Client must indemnify the Company for any costs and expenses incurred by the Company prior to cancellation and must pay any reasonable cancellation costs incurred by the Company.
- (g) This clause 5 is at all times subject to clause 14 of these Terms.

### 6. TERMS OF SUPPLY OF GOODS / SERVICES

- (a) Notwithstanding clause 9(b) where applicable, in relation to the Company providing the Goods and/or Services (as applicable) the Client must:
  - (i) keep the Goods in good condition, except for ordinary wear and tear;
  - (iii) reasonably ensure that the Goods are only operated by persons who are appropriately trained to use the Goods;
  - (iv) not make any unnecessary or unreasonable additions or replacements to the Goods without the Company's prior written consent;
  - (v) not undertake any unnecessary or unreasonable installation, modification or servicing of the Goods without written consent of the Company other than that which is deemed "normal user maintenance" as specified in the operations manual(s) in respect of the Goods provided by the Company to the Client;
  - (vi) ensure that the Goods are used in accordance with the relevant manufacturers' operators instruction manual and any other associated manuals in relation to the Goods;
  - (vii) not operate the Goods after notification by the Company that a condition exists which constitutes a hazard and that condition has not been rectified by the Company, until otherwise notified by the Company;
  - (viii) ensure that its employees, agents, contractors, and any of its related bodies corporate and their employees, agents and contractors, which perform obligations imposed by the Company by these Terms, do so strictly in accordance with these Terms;
  - (ix) not do, or omit to do, any act which may be considered by the Company to be prejudicial to the proper functioning or condition of the Goods;
  - (x) maintain the Premises and the Site by ensuring that the Environmental Specifications for each Good are maintained at all times that the Goods are at the Premises;
  - (xi) ensure that the Premises is safe and free from hazardous substances that would pose a risk to the Company's personnel when accessing the Premises and promptly rectify any risk at the Client's expense;
  - (xii) provide to any of the Company's personnel, representatives, employees or agents accessing the Premises adequate workspace and resources, including office furnishings and equipment, telephone and facsimile services and any other services or materials that may be reasonably required by such personnel or generally provided by the Client to its own employees in like positions; and
  - (xiii) comply with all other reasonable instructions of the Company as notified to the Client from time to time.
- (b) In relation to the Company providing the Services and/or supplying the Goods, the Client must provide the Company with access to the Premises and the Goods for the purpose of supplying the Goods and/or providing the Services at such times as is reasonably required by the Company and on the same terms as this clause and any applicable Service Terms set out in Schedule 2 of these Terms, and for this purpose the Client must ensure that the Premises is a safe working

environment for the Company, its employees and agents to supply the Goods and/or provide the Services.

- (c) All delivery dates and times for the supply of the Goods and/or provision of the Services are only an estimate. Subject at all times to clause 14 of these Terms, the Company is not liable to the Client for any loss or damage (including consequential loss or damages) arising from late delivery.
- (d) Where the Client does not accept delivery of Goods and/or allow the supply of Services when the Goods are ready for delivery and/or when the Services are to be provided by the Company, the Company may charge the Client for any additional freight and/or handling fees, storage costs, double handling costs, labour fees, travel and accommodation fees and any other out of pocket expenses reasonable incurred by the Company as a result of the Client's failure to accept delivery or allow supply.
- (e) The Company may charge the Client for any frustrated delivery to deliver the Goods and/or provide the Services to cover the Company's reasonable costs of attempted delivery of the Goods and/or the Services which arise solely from a breach by the Client of clause 6(b).
- (f) The Company will not be responsible for any disruption of a network, software or equipment of the Client caused by the Company providing the Goods and/or Services.
- (g) The Client is solely responsible for the day-to-day operation of the Goods including the accuracy and adequacy of the date entered into the Goods.
- (h) The Client is solely responsible for back-up and disaster recovery plans and procedures and shall not be entitled to any re-entry of lost data under the Terms.
- (i) The Client is solely responsible for protecting data and images stored or transmitted by any of the Goods, including providing and maintaining a secure network and network security components (as necessary), including, without limitation, any firewalls or security related hardware or software and ensuring that all data is fully protected against viruses and malicious software.
- (j) This clause 6 is at all times subject to clause 14.

### 7. PRICES AND PAYMENT

- (a) Subject to clause 4 and this clause 7, the price for the Goods and the Services will be the price specified in the quotation provided by the Company to the Client, unless otherwise specified.
- (b) The Company may (in its absolute discretion) offer a price concession or discount on the price for any Goods and/or Services, however such price concession or discount that the Company provides to the Client is conditional on the Client's full compliance with these Terms (including, without limitation, the Client paying for the Goods and/or Services in accordance with clause 7(d)). If the Client does not comply with these Terms the price concession or discount offered by the Company will not apply and the full price will apply.
- (c) If the Client has been granted credit facilities by the Company pursuant to the Credit Application Form, the price of the Goods and/or Services is due and payable in accordance with the terms and conditions of the Company in respect to the provision of the credit facilities as set out in the Credit Application Form or as otherwise notified by the Company to the Client.
- (d) Unless otherwise agreed in writing by the Company, or stated in these Terms (including, without limitation, subclause (c) above), the Client must pay for the Goods and Services:
  - (i) subject to subclause (ii) below, within 30 days from the date of the invoice; or
  - (ii) for Goods other than the Equipment, within 30 days from delivery.
- (e) The Company reserves the right to require additional security at any time prior to delivery of the Goods and/or Services if:
  - (i) pursuant to clause 4(d), the Client is not obtaining finance for the Goods on terms acceptable to the Company (acting reasonably); or

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- (ii) the creditworthiness of the Client becomes, in the Company's opinion, unsatisfactory, in which the case the Company may request appropriate security from the Client on terms acceptable to the Company, including (without limitation):
  - (ii) the Client providing a deposit for the Goods and/or Services to be acquired by the Client;
  - (iii) the directors of the Client providing a personal guarantee in respect of the obligations of the Client;
  - (iv) the Client providing a bank guarantee for the total amount of the Goods and/or Services to be acquired by the Client; and/or
  - (v) the client paying for the Goods and/or Services in full in advance.
- (f) The time for payment of the Goods and/or Services is of the essence, and all payments must be made on or before the due date as a condition precedent to future deliveries of Goods and/or the provision of Services under these Terms.
- (g) The Company may require immediate payment of all amounts outstanding (whether or not then due and payable):
- (i) if the Client does not materially comply with any one or more of its obligations under these Terms;
  - (ii) if the Company considers that the creditworthiness of the Client has become unsatisfactory; or
  - (iii) if one or more Insolvency Events occur.
- (h) In the event that the Client requires the Company to obtain and maintain additional permissions, licences, approvals or otherwise obtain any other pre-qualification or undertake any other compliance steps (**Pre-Qualification Approvals**) prior to the Company providing any Goods or Services pursuant to these Terms or otherwise under this agreement, the Client must reimburse the Company, on a full indemnity basis, for any costs incurred by the Company (including any fees paid) in obtaining and maintaining such Pre-Qualification Approvals within 30 days after the Company has provided the Client with reasonable evidence that such cost has been incurred by the Company (including where such costs are incurred on an ongoing basis). The Client will not be required to reimburse the Company under this clause in connection with any Pre-Qualification Approval that the Company is required by law to obtain or otherwise obligated by law to maintain.

**8. GST**

**(a) GST on price**

- (i) Unless otherwise stated, the prices stated in these Terms are GST exclusive.
- (ii) In addition to the price for the Goods and Services, the Client must pay to the Company an amount equal to any GST payable for any supply by the Company made under these Terms or under any agreement for the sale of Goods and Services.
- (iii) The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the price for the Goods and/or Services.
- (iv) The Client indemnifies the Company for any loss that the Company may incur as a result of the incorrect payment or non-payment of any GST and associated fees or penalties caused by the Client incorrectly asserting that it is registered for GST or failing to pay GST charged by the Company.
- (v) If the Company becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of another party to comply with the terms of this clause 8, the Client shall pay to the Company an additional amount on demand equal to the amount of those penalties and interest.

**(b) GST on claims**

- (i) If a payment to satisfy a claim or a right to claim under or in connection with these Terms gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
- (ii) If a party has a claim under or in connection with these Terms for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (iii) If a party has a claim under or in connection with these Terms whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

(c) This clause 8 is at all times subject to clause 14.

**9. WARRANTY, LIMITATION OF LIABILITY AND INDEMNITY**

**(a) Guarantees**

The Company's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Client is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage. The Client is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty against defects is given in addition to other rights and remedies of the consumer under law.

**(b) Warranty**

Subject to clause 9(c), any defect in workmanship or materials which occurs:

- (i) in the case of Equipment, within 12 months from the Handover Date; or
- (ii) in the case of Goods (other than Equipment), within three (3) months from the Supply Date or the end of the original 12 month equipment warranty from the Handover Date,

will be replaced or repaired by the Company (in the Company's absolute discretion) without the Company charging the Client for any labour expended or any spare parts used in respect of that replacement or repair, provided that:

- (iii) to claim the warranty, the Client must notify the Company at the address listed below in clause 9(d) within the date specified in clause 9(b)(i); and
- (iv) if the Company requires the Goods to be returned to the Company, the Goods are returned at the Client's expenses.

**(c) Exclusion**

The warranty provided by the Company pursuant to clause 9(b) and any other express warranty given by the Company, does not apply to:

- (i) any cassettes provided to the Client under any of the Services;
- (ii) any consumable goods as determined by the Company (including, without limitation, electronic tubes, lamps, seals, check valves, illumination sources, items wholly or partly of glass, silica or ceramic material, thermocouples, batteries, electrical elements, films and chemicals);
- (iii) any Goods that have already been repaired or replaced by the Company pursuant to clause 9(a); or
- (iv) the repair of any fault or the replacement of any defective part in the Goods directly or indirectly resulting from:
  - (A) any negligence or malpractice of the Client or any third party;
  - (B) the failure of the Client to maintain the Goods in good condition, except for ordinary wear and tear;

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- (C) the failure of the Client to ensure that the Goods are only operated by persons who are appropriately trained to use the Goods;
  - (D) any additions or replacements to the Goods made by the Client or third parties without the Company's prior written consent, and only then upon such conditions as required by the Company;
  - (E) any installation, unauthorised modification or servicing of the Goods other than that which is deemed "normal user maintenance" as specified in the operations manual(s) in respect of the Goods provided by the Company to the Client;
  - (F) any action or inaction of the Client or any third party (including, without limitation, any fire, flood, war, explosion, shortage of power, strikes, or due a telecommunications and / or network fault or failure);
  - (G) any act of God (including, without limitation, any flood, fire, lightning strike); or
  - (H) the Client or any third party failing to use or operate the Goods in accordance with these Terms (including, without limitation, clause 6); and
- (v) any maintenance, repair, replacement or any other work undertaken which forms a part of the Maintenance Services, Remote Maintenance Services or Preventative Maintenance Services (as applicable) ordered by the Client or otherwise agreed to be provided under these Terms.

### (d) Provider of warranty

The warranty given by the Company in clause 9(b) is given by Shimadzu Medical Systems (Oceania) Pty Ltd (ABN 77 074 306 255), of Unit E, 10 - 16 South Street, Rydalmere, NSW 2116.

**Phone:** 02 9898 2444

**Fax:** 02 9898 0818

### (e) Extended Warranty

At any time prior to the date and time of purchase of any Good or Equipment, the Client may, at its discretion, request or otherwise agree to purchase additional extended warranty (**Extended Warranty**) for the Extended Warranty Period at the Extended Warranty Price. These Terms will continue to apply to any Extended Warranty obtained by the Client pursuant to this clause.

### (f) Remedies

Subject to this clause and so far as may be permitted by law, and excluding claims in relation to personal injury and death, the liability of the Company and its employees and/or agents for a breach of a Non-Excluded Guarantee in relation to the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption shall, at the Company's option, be limited to:

- (i) in the case of goods:
  - (A) the replacement of the goods or the supply of equivalent goods; or
  - (B) the repair of the goods; or
  - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (D) the payment of the cost of having the goods repaired; or
- (ii) in the case of services:
  - (A) the supply of the services again; or
  - (B) the payment of the cost of having the services re-supplied.

### (g) Maximum Liability

To the extent permitted by law, the maximum liability of the Company and any of its personnel, representatives, employees or agents in connection with the Terms or otherwise any of the Goods and Services provided by the Company to the Client

(including for all breaches of warranties provided by the Company) will be limited to the level of insurance cover taken out and maintained by the Company (which will, throughout the term of this agreement, be at least to a level that a reasonably prudent business in a similar situation to the Company would maintain), as disclosed from time to time by the Company to the Client.

### (h) Reliance on skill or judgment

Subject to clause 14 of these terms and to the extent permitted by law, the Client acknowledges that the Client does not rely on the skill or judgment of the Company as to whether or not the Goods and/or Services are fit for any particular clinical purpose.

### (i) Indemnity

To the extent permitted by law but notwithstanding anything else in this agreement, each party indemnifies the other party from every liability, loss, damage, cost and/or expense incurred or suffered by the indemnified party arising directly out of the negligence or other wrongful act or omission of that party or its employees or agents.

### (j) Reduction of liability

Notwithstanding anything else in this agreement, the liability of a Party to these Terms to the other Party for loss or damage sustained, will be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations under and/or in connection with these Terms or otherwise at law.

### (k) Mitigation

Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under and/or in connection with a breach of these Terms, or in tort, or for any other common law legislative cause of action arising under and/or in connection with these Terms.

## 10. RISK AND TITLE

- (a) The risk in the Goods shall pass to the Purchaser immediately upon delivery of the Goods by the Company (unless otherwise agreed by the Company in writing).
- (b) Title in the Goods shall not pass to the Client until:
  - (i) the Client has discharged all outstanding indebtedness to the Company in respect of the Goods or any other amounts owing to the Company; and
  - (ii) the Client has made full payment in respect of the Goods, and until such time as the above obligations have been satisfied, the Client acknowledges and agrees that:
  - (iii) the Goods supplied are held by the Client as bailee for the Company;
  - (iv) the Client must store the Goods supplied in such a way that it is clear that they are the property of the Company;
  - (v) the Client hereby irrevocably gives the Company, its agents and servants, leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Client to search for and remove any of the Goods supplied to or in which the Company has property as aforesaid without in any way being liable to the Client or any person or company claiming through the Client and if the Goods or any of them are wholly or partially attached to or incorporated in any other goods, the Company may where practical disconnect or sever in any way whatsoever as may be necessary to remove the Goods;
  - (vi) if the Goods are sold, the Client acknowledges that such a sale is by the Client as bailee for and on behalf of the Company and the Client must hold the proceeds of such a sale in a separate account on trust for the Company and identified as such in the books of the Client;
  - (vii) the Client must not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and

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(viii) the Company may issue proceeding to recover all outstanding indebtedness to the Company in respect of the Goods or any other amounts owing to the Company notwithstanding that ownership may have passed to the Client.

- (c) For the purposes of subclause (b) above, the Client authorises the Company to register a security interest as defined by the Personal Properties Securities Act 2009 (**PPSA**) in respect of the credit, goods and services supplied pursuant to these Terms or any other contract between the Company and the Client. The Client agrees to execute all documents necessary to create a security interest in the PPSA register.

### 11. TERM AND TERMINATION

- (a) The Services will be provided by the Company to or for the benefit of the Client as agreed and in accordance with these Terms.

- (b) The Company may terminate its agreement with the Client in accordance with these Terms (including, without limitation, pursuant to clauses 12 and 13).

- (c) Where the Client has engaged the Company to provide Services in accordance with the Service Terms, the Client may terminate its agreement for the Company to provide such Services by providing a minimum of three (3) months' notice if:

- (i) the Client's business has been dissolved, disposed to a third party or otherwise the client no longer conducts the business for which purpose the Goods were originally purchased;
- (ii) the Client chooses, at its sole discretion, to either replace or otherwise remove the Goods with any other product of a similar nature; or
- (iii) a Change of Control occurs in respect of the Client or its business (including any related entity that conducts the Client's business),

and in which case it will be sole responsibility of the Client to remove or relocate such Goods at its own cost.

- (d) In the event that the Client provides a notice under clause 11(c):

- (i) all other provisions of these Terms other than the Service Terms outlined in Schedule 2 continue to operate (to the extent applicable) after the Client has provided such notice;
- (ii) the Client agrees that all amounts paid in advance and prior to the date of issue of the notice are not refundable by the Company; and
- (iii) the Services will be terminated at the end of the nearest whole month as determined by the Company, unless otherwise agreed between the parties.

- (e) For the avoidance of any doubt, any Good purchased by the Client pursuant to these Terms shall remain the property and responsibility of the Client after termination of these Terms.

- (f) Notwithstanding any other clause of these Terms, the Client may end this Agreement immediately if any of the following events occur:

- (i) the Company commits any material breach of these Terms, and fails to remedy such breach within 14 days after being required to do so by the Client by way of a notice in writing;
- (ii) the Goods fail to perform in accordance with the specifications set out in this Agreement;
- (iii) the Company ceases, or indicates that it is about to cease, carrying on business;
- (iv) the Company is not for any reason able to deliver the Goods to the Client in accordance with this Agreement for a continuous period of 10 days; or

and the parties acknowledge that the above rights of termination are in addition to any other remedies which the Client may have in law or equity.

### 12. DEFAULT

- (a) If the Client defaults in the payment of monies on the basis set out in these Terms the Client must pay to the Company interest on any of the amounts owing due and payable, but unpaid (including interest payable under this claim but unpaid), from and including the due date for payment to the date of actual payment (as well as before judgement) and the rate of interest will be 2% above the Westpac 90 day bank bill rate as published in the Australian Financial Review, calculated with reference with the successive periods of 30 days commencing on the day following the due date for payment. Interest accrues from day to day and may be compounded by the Company at 30 day intervals; and

- (b) If the Client commits a material breach of these Terms (including, without limitation, a failure to pay monies on the basis set out in these Terms), then, without limiting any other rights of the Company:

- (i) the Client must pay to the Company all expenses, including (without limitation) reasonable legal expenses incurred by the Company in enforcing its rights under these Terms;
- (ii) the Company may state in any notice to the Client that, unless the default is remedied, all money owing under these Terms which is not yet due for payment is now due, and if the notice of the Company is not complied with then that money becomes due; and

- (iii) the Company may immediately terminate these Terms.

- (c) If the Client is affected by an Insolvency Event, the Company may immediately terminate this agreement.

- (d) If the Company terminates these Terms in accordance with this clause or as otherwise provided in these Terms, the Company may, without prejudice to any other rights or remedies available to the Company, immediately cease providing the Services to the Client and cease delivering of the Goods to the Client and sell or otherwise dispose of the Goods (to the extent still owned by the Company) and apply the proceeds of the sale to any overdue amount.

- (e) If the Company fails to comply with these Terms the Company must pay to the Client all expenses, including (without limitation) reasonable legal expenses incurred by the Client in enforcing its rights under these Terms.

### 13. FORCE MAJEURE

- (a) Neither Party is liable for any failure to comply with these Terms or any agreement for the sale of Goods and/or Services if the failure (directly or indirectly) arises by virtue of a Force Majeure Event. If such circumstances occur, the performance of each Party's obligations in accordance with these Terms will be suspended for so long as the Force Majeure Event continues or prevails.

- (b) For the purpose of this clause a "**Force Majeure Event**" is an event that is taken to be beyond either party's reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any local, state or federal government, government authority or instrumentality.

- (c) Neither party is obliged to remedy such circumstances in respect of a Force Majeure Event.

- (d) If a Force Majeure Event continues for more than 30 days, either party may terminate these Terms by giving 5 Business Days written notice to the other party.

- (e) Nothing in this clause releases either party from any obligations to pay the other party in accordance with these Terms, or otherwise comply with these Terms.

### 14. IMPLIED TERMS

- (a) It is acknowledged by the Company that, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the Competition and Consumer Act), certain statutory implied guarantees and warranties (including, without limitation, the statutory guarantees under the Competition and Consumer Act) will be implied into these Terms ("**Non- Excluded Guarantees**").

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- (b) The Company further acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
- (c) Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under any contract with the Client or these Terms and expressly disclaims any such warranties. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- (d) In the event that the Company breaches any term or condition that is implied by law and which is not capable of being excluded, the parties agree that the Company's liability will be limited to, at the Company's discretion:
  - (i) re-supply of the relevant non-conforming Good or Service;
  - (ii) paying the cost of such re-supply;
  - (iii) refund to the Client of the fees paid for the relevant non-conforming Good or Service; or
  - (iv) in relation to claims relating to personal injury or death, the maximum liability of the Company will be limited to the maximum liability set out in clause 9(g) of these Terms.

### 15 SUBCONTRACTING

After giving prior written notice to the Client, the Company reserves the right to subcontract the provision of the Services and the production, manufacture or supply of the whole or any part of the Goods or any other materials or services provided by the Company to the Client, provided that the subcontracting does not materially affect the Goods and/or Services provided to the Client under these Terms.

### 16. PRIVACY / CREDIT REPORTING

- (a) The Company will collect information in relation to the Client for the purpose of providing the Goods and Services to the Client in accordance with these Terms, in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time.
- (b) Where the Goods are supplied to the Client on credit the Client irrevocably authorises the Company, its employees and agents to make such inquiries as the Company deems necessary to investigate the credit worthiness of the Client from time to time including (without limiting) the making of inquiries of persons nominated as trade referees, the bankers of the Client, or any other credit providers or credit reporting agencies (the **Information Sources**) and the Client hereby authorises the Information Sources to disclose to the Company such information concerning the Client which is requested by the Company.
- (c) Each party agrees to comply with all applicable privacy laws in respect of any incidental information that is accessed or disclosed to that party, including but not limited to, the bylaws for each state or territory relating to data protection and health records.

### 17. NOTICES

- (a) Any demand, notice, consent, approval or other communication under this agreement (**Notice**) may be made or given by a party or the solicitor for that party provided that it is in legible writing, signed and either delivered in person, posted to, or left at, the addressee's address for service, or sent by fax to the addressee's address for service.
- (b) If the Notice is delivered in person, or by being left at the addressee's address for service, it is regarded as given to the addressee upon delivery. If the Notice is sent by post it is taken to have been received two (2) Business Days from and including the date of posting by ordinary prepaid post. If the Notice is sent by fax it is taken to have been received when legibly received by the addressee, with receipt being evidenced by a report generated by the sender's machine confirming uninterrupted transmission.
- (c) A person's address for service are those set out in the order or such other document provided from time to time. If the person is a company, the person's address for service shall also be the registered address of the company.

### 18. GOVERNING LAW

- (a) These Terms shall be governed by and construed in accordance with the laws in force in the State.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any court that may hear appeals from any of those courts, for any proceedings in connection with these Terms, and waives any right it might have to claim that those courts are an inconvenient forum.

### 19. WAIVER

- (a) A right of the Company may only be waived in writing, signed by the Company.
- (b) No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again.
- (d) The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

### 20. RIGHTS NOT LIMITED

Any right that either party may have under these Terms is in addition to, and does not replace or limit, any other right that each party may have.

### 21. SEVERABILITY

Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of the Terms.

### 22. ASSIGNMENT

Neither party may assign, sub-contract or otherwise deal with its benefits or obligations under these Terms without the prior written consent of the other party in writing. The party's consent cannot be unreasonably withheld.

### 23. VARIATION

These Terms shall remain in force for the duration of the term of the agreement between the Client and the Company. The Company must provide the Client prior written notice of any changes or amendments made to these Terms to apply after the term of this agreement. For the avoidance of any doubt, any amendment of these Terms by the Company will not apply retrospectively to any agreement that is in force between the Client and the Company and governed by these Terms at the time that the Company amends these Terms.

### 24. FULL EFFECT

Each party will promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this agreement.

### 25. NO PARTNERSHIP OR EMPLOYMENT

- (a) The Client acknowledges that it has no authority to bind the Company without the Company's written consent.
- (b) This agreement and these Terms does not create a relationship of employee and employer, partnership or joint venture between the Company and the Client and the parties acknowledge that the Company enters into this agreement as an independent contractor and retains the ultimate responsibility for management and direction in relation to the provision of the Training Services.
- (c) If, despite the express intention of the parties, an employment contract is held to legally arise between the Client and the Company for the purposes of any legislation or otherwise, then the Client agrees to indemnify and keep harmless the Company from all and any employment related expenses and liabilities including but not limited to wages, superannuation, statutory entitlements, termination benefits, tax, workers' compensation and payroll tax.
- (d) To the extent that a Related Body Corporate has rights under this Agreement, the Company holds those rights as trustee.

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**26. ENTIRE AGREEMENT**

These Terms constitute the entire agreement between the Company and the Client and supersedes all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Client may seek to impose.



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**SCHEDULE 1 – TRAINING TERMS**

The following terms and conditions (being the Training Terms) shall apply specifically in relation to the provision of Training in addition to the "General Terms" (which "General Terms" will at all times continue to apply in respect of any Training).

**1. DEFINITIONS**

In this Schedule 1, the following definitions specifically apply in addition to the definitions set out in clause 1 of the Terms:

- (a) **Training Period** means the period agreed between the Company and the Client during which the Company agrees to provide the Training in accordance with these Terms.
- (b) **Business** means the business of the Client and its Related Bodies Corporate from time to time.
- (c) **Confidential Information** means these Terms and all information provided in any form by a party about its business or otherwise the Training, including trade and business secrets, documents, manuals, guides, reports, notes, accounts, business and marketing plans, proposals and analyses, customer and market research information, technology and other materials, including copies of any of these.
- (d) **Fee** means the fee agreed between the parties in respect of the Training to be provided by the Company in accordance to these Terms.
- (e) **Intellectual Property** means:
  - (i) the Confidential Information;
  - (ii) copyright, patents, database rights and rights in trade marks, designs (within the meaning of the *Designs Act 2003* (Cth)), know-how and confidential information (whether registered or unregistered);
  - (iii) applications for registration, and rights to apply for registration, of any of the foregoing rights; and
  - (iv) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.
- (f) **Patient Information** means any and all information provided by in any form by the Client about any patient attending, affiliated with or otherwise connected with the Client's organisation including but not limited to names, addresses, medical records, personal details and all Personal Information as defined in the *Privacy Act 1988* (Cth).

**2. TRAINING**

- (a) By entering into the agreement for the purchase of Goods or provision of Services (if applicable) in accordance with these Terms, the Client agrees to engage the Company to provide Training to the Client at the Premises for the duration of the Training Period.
- (b) If engagement of the Company continues after the Training Period but the parties have not agreed in writing as to the terms to apply for the further period of engagement, then the engagement will continue on the same terms as the Training Terms.

**3. PERFORMANCE OF TRAINING**

- (a) The Company agrees to provide the Training to the Client.
- (b) The Company will ensure that it carries out the Training to the best of their ability in a timely, efficient and professional manner and observe the ethics that apply to their profession and within the Business.
- (c) The Company warrants that the specific employees, representatives or agents engaged to provide the Training has the qualifications, skills, experience and ability to carry out the obligations set out in these Training Terms.
- (d) The parties agree that the only services to be provided by the Company under these Training Terms is training in relation the proper use and operation of the Equipment and excludes any

clinical training or training in relation to conducting diagnosis of live scenarios or any such similar diagnostic analysis.

**4. Access, Safety and Security**

- (a) The Company is allowed all reasonable access to the Premises for the purpose of providing the Training.
- (b) The Company must comply with all directions, procedures and policies of the Client relating to occupational health, safety and welfare as well as security when using premises, facilities and equipment of the Client.

**5. Fees and Expenses**

- (a) The Company will charge the Client the Fee for the provision of the Training by the Company.
- (b) If the Fee is a daily rate, then the Fee assumes a minimum 7 hour day and the Company reserves the right to pro rate the Fee for any particular day where less than 7 hours was worked on that day.

**6. WARRANTY**

The Company warrants that in the performance of the Training Services it will not infringe any industrial or Intellectual Property rights of any person.

**7. NON - EXCLUSIVITY**

The Training must be provided in accordance with these Terms.

**8. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**

- (a) In respect of Confidential Information disclosed by or related to the Company, the Client must:
  - (i) maintain and must ensure that its employees, agents or representatives maintain in confidence all Confidential Information disclosed to it and must ensure that the Confidential Information are kept confidential and not disclosed to third parties who are not part of the Client's organisation or otherwise an employee, agent or representative of the Client;
  - (ii) not disclose Confidential Information to any other third party for any purpose, other than as permitted under clause 8(c) of this Schedule 1 of these Terms;
  - (iii) restrict the disclosure of any Confidential Information to any employee, agent or representative of the Client who require Confidential Information for the purposes of these terms or the Training Services;
  - (iv) ensure that each person to whom any Confidential Information has been disclosed by the Client complies with the obligations of the Client under this clause 8 of this Schedule 1 of these Terms; and
  - (v) immediately notify the Company in writing if any person has disclosed or is suspected by the Client of disclosing or intending to disclose any Confidential Information to any other person otherwise than in accordance this clause 8 of this Schedule 1 of these Terms.
- (b) In respect of Confidential Information disclosed by or related to the Client and all Patient Information, the Company must:
  - (i) maintain and must ensure that its employees, agents or representatives maintain in confidence all Confidential Information and Patient Information disclosed to it and must ensure that the Confidential Information and Patient Information are kept confidential and not disclosed to third parties who are not part of the Company or otherwise an employee, agent or representative of the Client;
  - (ii) not disclose Confidential Information and Patient Information to any other third party for any purpose, other than as permitted under clause 8(c) of this Schedule 1 of these Terms;

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- (iii) restrict the disclosure of Confidential Information and Patient Information to any employee, agent or representative of the Company who requires Confidential Information or Patient Information for the purposes of these terms or the Training Services;
  - (iv) ensure that each person to whom any Confidential Information or Patient Information has been disclosed by the Company complies with the obligations of the Company under this clause 8 of this Schedule 1 of these Terms; and
  - (v) immediately notify the Client in writing if any person has disclosed or is suspected by the Client of disclosing or intending to disclose any Confidential Information or Patient Information to any other person otherwise than in accordance this clause 8 of this Schedule 1 of these Terms.
- (c) A party may reveal Confidential Information or Patient Information (as applicable) which:
- (i) the party is required by law or by any stock exchange to disclose in which case the party must immediately notify the other party of the requirement and must take lawful steps and permit the other party to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information or Patient Information;
  - (ii) is in or enters the public domain for reasons other than a breach of these Terms;
  - (iii) is disclosed to the party by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality;
  - (iv) the party can show that it lawfully already had or that it receives in circumstances unrelated to the circumstances contemplated under this Agreement; or
  - (v) is developed independently by the party without the benefit of any Confidential Information or Patient Information.

## SCHEDULE 2 – SERVICE TERMS

The following terms and conditions (being the **Service Terms**) apply specifically in relation to the provision of Services in addition to the General Terms (which General Terms will at all times continue to apply in respect of any Services).

### 1. INSTALLATION SERVICES

- (a) If the Client orders Installation Services, or the Company otherwise agrees with the Client to provide Installation Services, the Company will provide the Installation Services on the terms and conditions set out in clause 1 of Schedule 2 of these Terms.
- (b) In the case of the Company, or any third party engaged by the Company to act on its behalf, agreeing to provide Installation Services, the Client must first ensure that the Premises (or any other premises of the Client in which the Equipment is to be installed,) is a Prepared Site. The Company reserves the right to determine whether the Premises (or any other premises of the Client in which the Equipment is to be installed) is a Prepared Site.
- (c) The Company, or any third party engaged by the Company to act on its behalf, is not obliged to provide the Installation Services to the Client if:
  - (i) the date of the provision of the Installation Services is delayed by the Client; or
  - (ii) the Company considers that the Premises (or any other premises of the Client in which the Equipment is to be installed,) is not a Prepared Site prior to the mutually agreed installation date.
- (d) Subject to clause 5(c) of these Terms, the Installation Services will be provided at the time of delivery of the Equipment or as soon as practicable thereafter, unless otherwise mutually agreed by the Company and the Client.
- (e) If the Client requires any variation of the Installation Services prior to the completion of the Installation Services, the Client must advise the Company in writing, and the Company can choose (in its absolute discretion) whether to accept the variations. The Company will provide to the Client a quotation for the proposed variations and also any time variations required to provide the Installation Services based on the variations required by the Client.
- (f) If the Company considers (acting reasonably) that any special handling equipment is required by the Company to provide the Installation Services including, without limitation, heavy lifting gear for the movement of Equipment to and/or at the Premises (or any other premises of the Client in which the Equipment is to be installed), the cost of hiring or the use of such equipment and any other costs associated with the hire or use of such equipment is the responsibility of the Client, and any associated costs are to be borne by the Client.
- (g) If any permits, road or footpath closures, traffic control, restricted access, building works including door, window or wall needs to be removed, or made wider, so that the Company can provide the Installation Services to the Premises (or any other premises of the Client in which the Equipment is to be installed), the associated works are at the sole responsibility of the Client and any associated costs are to be borne by the Client.
- (h) Unless otherwise required by law, any radiation and/or electrical compliance testing following the provision of the Installation Services by the Company is the responsibility of the Client, and any associated costs are to be borne by the Client.
- (i) The Client agrees that the Company will not, is not liable to and has no obligation to ensure that the Prepared Site meets all structural and engineering requirements in respect of the Installation Services. The Client is deemed to have obtained appropriate structural engineering (or similar engineering) advice prior to ordering or the Company otherwise agreeing to provide Installation Services.
- (j) The Client will pay any additional expenses incurred by the Company due to any Installation Services not being able to be completed after its commencement or otherwise due to any

unreasonable delay (and in any event for more than 5 Business Days) occurring because of a defect at the Prepared Site or the Prepared Site failing to meet any minimum structural and engineering requirements for the Installation Services.

- (k) The Client agrees that nothing in these Terms obligates or requires the Company to provide any Installation Services in respect of any good or any Equipment at any premises that is not the Premises or a Prepared Site or in the event of any relocation of the Goods or Equipment by the Client, after the completion of the Installation Services, to any other location (even if such location is within the Premises or the Prepared Site).

### 2. MAINTENANCE SERVICES

- (a) If the Client orders Maintenance Services, or the Company otherwise agrees to provide Maintenance Services to the Client, the Company will start providing the Maintenance Services on such date, and in accordance with terms and conditions set out in this clause 2 of Schedule 2 of these Terms.
- (b) Subject to this clause 2 of the Service Terms, if the Company agrees to provide "Maintenance Services" then:
  - (i) those services will include a selected number of routine preventative maintenance visits by the Company to the Client's Premises (or any other premises of the Client as agreed by the Company), per year as agreed and during Business Hours; and
  - (ii) those services will involve the Company conducting mechanical adjustment, lubrication, routine calibration, minor repairs and electrical checks on the Equipment, to ensure the Equipment is maintained in an industry acceptable state of serviceability;
  - (iii) those services will, subject to sub-clause (d) below, involve the Company providing Remote Maintenance Services to the Client (as reasonably required by the Client) during Business Hours; and
  - (iv) the cost of all Goods in providing the maintenance services may be included within the provision of the "Maintenance Services" other than where there has been misuse, abuse or accidental damage to the Goods or Equipment and in which case the Client will be liable to pay the Company the full cost of repairing the Goods or Equipment and providing any Goods for such repairs (including the total cost replacement of the affected Goods or Equipment).
- (c) If the Company agrees to provide "Platinum", "Gold", "Silver" or "Bronze" Maintenance Services, those services will be provided to the Client pursuant to these Terms (including this Schedule 2).
- (d) If the Company agrees to provide "Remote Maintenance Services", those services will be provided in accordance with these Terms, including (without limitation) on the following terms:
  - (i) the Client must ensure that, at the cost of the Client, the Company has remote access to the Equipment;
  - (ii) the Company reserves the right to determine whether the Company has the necessary access to the Equipment, and is under no obligation to provide the Remote Maintenance Services if the Company does not have such access;
  - (iii) all costs (both of the Company and of the Client) associated with obtaining internet access and/or VPN access to the Equipment is at the cost of the Client; and
  - (iv) other than as expressly provided in these Terms, the Company, its employees and/or agents shall not be liable for any loss or damage (including any consequential loss or damage, which includes, without limitation, loss of profits and loss of revenue) arising as a result of any failure to provide the Remote Maintenance Services due to a telecommunications and / or network fault or failure.
- (e) Notwithstanding anything to the contrary in this clause 2 of the Service Terms, but subject at all times to clause 14 of the General Terms, if:

- (i) the Equipment requires maintenance services and/or the supply of any Goods by virtue of the Client failing to comply with clause 6 of the General Terms; or
  - (ii) the Client requires any maintenance services and/or the supply of any Goods outside of those Services / Goods pursuant to sub-clause (b), (c) or (d) above,
- the Company may (in its absolute discretion) decide whether to provide those services and/or Goods to the Client. If the Company does provide those services and/or Goods, the Company may charge the Client an additional fee. The additional fee will be as determined by the Company in its absolute discretion and agreed with the Client, and may include, without limitation, the cost of any Goods, freight and/or handling fees, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company.
- (f) Notwithstanding anything to the contrary in this clause, the Client:
    - (i) acknowledges that Occupational Health & Safety Requirements prohibit the employees and agents of the Company from providing the Maintenance Services alone;
    - (ii) agrees that it will ensure that a minimum of one staff member of the Client must remain on the Premises (or any other premises in which the Company is providing the Maintenance Services) at all times when the Maintenance Services are being provided or otherwise when the Company's staff attends the Premises (including after Business Hours if expressly agreed between the parties) and that staff member must be able to render assistance to the relevant employee and/or agent of the Company in the event of a workplace accident of the employee and/or agent;
    - (iii) agrees that in the event that the Client cannot comply with clause (f)(ii) above, the Client must give the Company a minimum of 10 Business Days prior written notice (prior to scheduled date of the provision of the Maintenance Services) to:
      - (A) postpone the scheduled date of the provision of the Maintenance Services to a date mutually agreed between the Company and the Client when the Client can comply with clause (f)(ii) above; or
      - (B) otherwise to enable the Company arrange for a second employee and/or agent of the Company to attend the provision of the Maintenance Services. If the Company does provide this service, the Company may charge the Client an additional fee. The additional fee will be as determined by the Company in its absolute discretion and agreed with the Client (and may include, without limitation, administrative costs, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company); and
    - (iv) agrees that in the event that:
      - (A) the Client fails to comply with clause (f)(ii), and does not otherwise notify the Company pursuant to clause (f)(iii), the Company may charge the Client for any additional costs incurred by the Company arising for frustrated delivery of the Maintenance Services caused by the Client; or
      - (B) the Client fails to comply with clause (f)(iii), the Company will postpone the scheduled date of the provision of the Maintenance Services to another date, and the Company may charge the Client the additional costs incurred by the Company in relation to the postponement of the provision of the Maintenance Service, and

such costs may include, without limitation, administrative costs, labour fees, travel and accommodation fees and any other out of pocket expenses of the Company.
  - (g) Notwithstanding anything to the contrary in this clause, the Company will not be required to provide the Maintenance Services for any Force Majeure Event.
  - (h) Notwithstanding anything to the contrary in this clause, and subject to clause 6, unless otherwise agreed by the Company in writing, the date and time for the provision of the Services by the Company is left to the absolute discretion of the Company, however the Company will provide the Client with advance notice as to the date and time for the provision of the Services.
  - (i) Notwithstanding anything to the contrary in the Terms the Client acknowledges and agrees that:
    - (A) the Company's obligation to provide the Maintenance Services, Remote Maintenance Services or Preventative Maintenance Services (as applicable) is satisfied by the Company maintaining the Goods to an operational level that meets the manufacturer's specifications.
    - (B) subject to clause 2(i)(C) below, in providing the Maintenance Services, Remote Maintenance Services or Preventative Maintenance Services (as applicable), the Company can, in its absolute discretion, use refurbished, second hand, non-original, equivalent or substitutable parts provided that such parts are in operational order and fit for purpose;
    - (C) the Maintenance Services, Remote Maintenance Services or Preventative Maintenance Services (as applicable) excludes any maintenance or repair in respect of any fair wear and tear as determined by the Company in its sole discretion acting reasonably;
    - (D) nothing in these Terms or in any description provided or representation made by the Company in respect of the Goods or Services obligates the Company to upgrade any existing hardware, software or operating system which was installed during the Installation Services to the next available version of that hardware, software or operating system or otherwise supply that new version; and
    - (E) the Company may (in its absolute discretion) update any existing software or operating system installed during the Installation Services with the latest patch, update or bug fix that has been released by the developers of that software or operating system.
  - (j) If the Company notifies the Client that the Good can no longer be repaired due to old age, lack of equivalent parts or in the event of substantial unrepairable damage, the Client may enter into a loan arrangement by providing an executed Loan Equipment Form to the Company. Any equipment loaned pursuant to this clause will be subject to the terms and conditions set out in the Loan Equipment Form and any other terms and conditions agreed between the Company and the Client.
  - (k) This clause 2 of the Service Terms is at all times subject to clause 14 of the General Terms.