

Terms and conditions for the supply of equipment and engineering services

Hastings Deering (Australia) Limited
ABN 49 054 094 647

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1. GENERAL TERMS AND CONDITIONS OF SALE FOR EQUIPMENT AND ENGINEERING SERVICES

<p>1. Supply of Goods or Services</p>	<p>These general terms and conditions (Sales Terms) apply to the sale of all equipment, components, accessories and materials (Goods), engineering services and HD Advantage as defined at page 16](Services) supplied, or to be supplied, by Hastings Deering (Australia) Limited ABN 49 054 094 647 (Supplier) to a person requesting the supply of those Goods or Services (Customer) and whose details are specified in the quotation or other documentation produced by the Supplier and incorporating by reference these general terms and conditions (together, the Contract).</p> <p>If a contract has already been entered into, and remains in effect, between the Supplier and the Customer that applies generally to the supply of Goods or Services covered by these Sales Terms then the terms contained in that contract will apply and prevail over these Sales Terms in the event of any inconsistency.</p> <p>Otherwise, no quotation or estimate provided by the Supplier to the Customer constitutes an offer to sell or to contract and no binding contract will arise as a result of any purchase order or other documentation received by the Supplier from the Customer in relation to a quotation or estimate (Offer) except as a result of the acceptance by the Supplier of an Offer made by the Customer that incorporates these Sales Terms.</p> <p>If the Customer has made an application to the Supplier for the provision of credit in relation to the sale of Goods or Services contemplated by the Contract then the Customer acknowledges that the Supplier's obligations under the Contract remain subject at all times to the Supplier being prepared to provide such credit by the Customer on terms satisfactory to the Supplier.</p>
<p>2. Priority</p>	<p>The Contract contains the entire agreement between the parties with respect to the subject matter of the Contract and supersedes all prior agreements and understandings between the parties in connection with the subject matter of the Contract.</p> <p>In particular, no oral explanation or information provided by any party to another:</p> <ul style="list-style-type: none"> a. affects the meaning or interpretation of the Contract; or b. constitutes any collateral agreement, warranty or understanding between any of the parties. <p>The parties acknowledge and agree that any warranties, representations, terms and conditions supplied by the Customer (whether included in a purchase order or any other document) not recorded in these Sales Terms will be of no legal effect and will not constitute part of this Contract (even if a document containing such items is signed by any of the Supplier's personnel).</p> <p>Unless another part of the Contract expressly states otherwise, in the event of any inconsistency between other parts of the Contract and these Sales Terms, these Sales Terms will prevail.</p> <p>The parties may agree to vary the terms of the Contract by recording their agreement to do so in writing. However, any such variation will only be binding on the Supplier if signed by a director of the Supplier or an employee of the Supplier with a title including the words "Mining Business Manager", "General Manager", "Chief Operating Officer", "Chief Financial Officer" or "Chief Executive Officer".</p>

<p>3. Price</p>	<p>The price of Goods or Services as specified in the Contract by the Supplier (Price), subject to any specific terms and conditions contained in the Contract and unless otherwise agreed in writing, excludes delivery of the Goods to the premises to which the Goods are to be delivered in accordance with this Contract (Supply Address), the cost of packaging, loading and insurance charges, transportation of any Goods to the Supplier if the Customer makes a warranty claim and any other amount that the Supplier is required to pay, or which becomes payable, in respect of any taxes, duties or imposts of any kind imposed on the sale of the Goods or Services.</p> <p>The Customer acknowledges that if the Customer requests any variation in the Goods or Services (as applicable) to be supplied, including as to the circumstances in which the Services would normally be performed, the specifications of the Goods, the timing or order of the provision of the Services, the scope of the Services or any other variation in the Goods or Services (as applicable) to be supplied or delivered, the Supplier has an absolute discretion to accept or reject the requested variation and acceptance may be subject to such conditions as the Supplier may determine in its absolute discretion, including an increase in the Price or a revised schedule for (as applicable) delivery of the Goods or performance of the Services.</p>
<p>4. GST</p>	<p>Terms defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) have the same meaning in this clause 4. Unless expressly included, the consideration for any Supply under or in connection with these Sales Terms does not include GST.</p> <p>To the extent that any Supply made under or in connection with these Sales Terms is a Taxable Supply, the recipient must pay, in addition to the consideration to be provided under these Sales Terms for that Supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply. The recovery of any amount in respect of GST by the Supplier under these Sales Terms is subject to the issuing of a Tax Invoice.</p>
<p>5. Delivery and passing of risk</p>	<p>The risk of any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (including legal costs on a solicitor and own client basis) (Loss) to Goods will pass to the Customer on delivery of the Goods (Delivery), which occurs on the earlier of:</p> <ul style="list-style-type: none"> a. collection of the Goods by the Customer; b. delivery of the Goods to the Customer at the Supply Address; or c. delivery of the Goods by the Supplier to a carrier nominated by the Customer or arranged by the Supplier for the purpose of delivering Goods to the Customer at the Supply Address. <p>The Supplier is not liable for any failure to Deliver Goods or to perform the Services, including by any date agreed in writing by the Supplier as the date for the Delivery of Goods or performance of the Services, or for delay in the Delivery of Goods or performance of the Services occasioned by any cause whatsoever, whether or not it is beyond the control of the Supplier.</p> <p>The Supplier will use its reasonable endeavours to Deliver the Goods or perform the Services in accordance with the terms of the Contract but will not be liable for any failure to Deliver the Goods or perform the Services in accordance with any particular requirements of the Customer. Failure to Deliver part or all of the Goods or to perform part or all of the Services the subject of the Contract by any agreed time will not entitle the Customer to terminate the Contract or to claim compensation of any nature. The</p>

	Customer is not entitled to reject Goods on the basis of late Delivery or to reject Services on the basis of late performance.
6. Service terms	<p>Where the Supplier is required to provide the Services in conjunction with, as part of, in respect of, on the basis of or in addition or supplementary to work carried out by the Customer or by other persons or parties including, without limitation, design, construction, manufacturing, documentation, resources, validation, project management and/or resource coordination (Customer Works), whether or not the Customer Works are subject to review by the Supplier, the Supplier and its personnel will not be liable to the Customer in respect of the accuracy, correctness or suitability of the Customer Works, and the Customer shall indemnify and keep indemnified the Supplier from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to the Customer Works and must reimburse the Supplier for all Loss incurred as a result of or arising from or, relating to any delay or failure to perform the Customer Works, including any Loss incurred in rectifying, remedying or making good the Customer Works.</p> <p>Where the Services involve the provision of personnel who will work either in whole or in part at premises owned or occupied by the Customer or a subcontractor of the Customer or who is subject to direction either complete or partial by the Customer or a subcontractor of the Customer as to the performance of his duties, the Customer shall indemnify and keep indemnified the Supplier from and against all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or relating to actions of such personnel.</p>
7. Information and access	<p>The Customer must provide the Supplier, in a timely manner, with all necessary information, documents or other particulars and make the necessary arrangements for any access, approvals and permits, equipment and facilities that the Supplier may reasonably require for the Delivery of the Goods or performance of the Services.</p> <p>Where the Services are to be performed other than at the premises of the Supplier, the Customer must ensure the provision of a safe working environment in accordance with all applicable legislation. The Customer must also indemnify and keep indemnified the Supplier in respect of all actions, suits, causes of action, claims, demands and costs of whatsoever nature and howsoever arising from or in relation to occupational health and safety issues and ensure that appropriate permits and insurances are in place.</p>
8. Retention of title in respect of Goods	<p>Notwithstanding that risk in Goods may have passed pursuant to clause 5, title to and ownership of the Goods remains with the Supplier at all times and does not pass to the Customer until such time as all amounts which from time to time are owing by the Customer to the Supplier with respect to those Goods have been paid in full. The Customer acknowledges that until such time as title to and ownership of the Goods passes to the Customer, the Customer is in possession of the Goods for and on behalf of the Supplier as bailee.</p> <p>The Customer grants to the Supplier an irrevocable licence to enter any of the Customer's premises, exercisable upon a Termination Event (as defined in clause 23 below). This licence to enter permits the Supplier by its officers, employees, servants, agents, representatives or invitees (Personnel), at its sole option to enter the Customer's premises and repossess and remove all Goods on the premises for which title has not passed to the Customer. The Customer consents to such actions and agrees that the Supplier will not be liable for any Loss suffered by the Customer as a result of the Supplier taking such actions.</p>

	<p>Until such time as title to and ownership of the Goods passes to the Customer in accordance with this clause 8, the Customer must store those Goods separately and in such a manner that they are clearly identified as the property of the Supplier and must not, without the written consent of the Supplier:</p> <p>a. grant or register, or permit to be granted or registered any security interest (as defined in the <i>Personal Property Securities Act 2009</i> (Cth) (PPS Act) (Security Interest) over any of the Goods in favour of another person which ranks in priority to the Supplier's Security Interest in the Goods;</p> <p>b. affix the Goods to any item of real or personal property; or</p> <p>c. sell or dispose or give possession or control of the Goods to another person.</p>
<p>9. Invoicing and Payment</p>	<p>The Supplier will invoice the Customer for Goods and/or Services supplied under the Contract (Invoice). The Invoice will set out the Price and the quantity of Goods and/or Services supplied. The Customer must pay the Price for the Goods and/or Services supplied to the Customer:</p> <p>a. within the period specified in the Contract or, if no period is specified, cash ex works (in respect of Goods) or cash on delivery in respect of Services;</p> <p>b. unless otherwise agreed in the Contract, in cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Supplier or in any other way that the Supplier directs in writing to the Customer; and</p> <p>c. without any abatement, reduction, or set-off by the Customer.</p> <p>If payment is not made by the Customer by the due date, the Supplier may charge interest on the amount outstanding, which will accrue interest from the first day after the due date until payment is made in full. Interest will be calculated on a daily basis with an interest rate equal to the Westpac indicator or benchmark rate as published in the Australian Financial Review on the date when the relevant amount is due for payment (or any other equivalent benchmark rate selected by the Supplier in its absolute discretion) plus 2%.</p>
<p>10. Trade-in</p>	<p>If specified in the Contract, payment for the Goods may be made in whole or in part by the Customer by way of trade-in equipment, including all accessories and attachments. The Customer warrants that any trade-in equipment, including all accessories and attachments, is owned by it free from all Security Interests or other encumbrances.</p> <p>If the value of the trade-in equipment is specified in the Contract after an inspection of the trade-in equipment by the Supplier then acceptance of the trade-in by the Supplier remains subject to the trade-in equipment being in essentially the same condition on the day that the trade-in equipment is delivered to the Supplier as on the date of the Supplier's inspection of that trade-in equipment.</p> <p>If the value of the trade-in equipment is specified in the Contract without any prior inspection of the trade-in equipment by the Supplier or no value for the trade-in equipment is specified the Supplier will determine the final value of the trade-in equipment when the trade-in equipment is delivered to the Supplier.</p> <p>In order to complete the trade-in, the Customer must provide the Supplier with a valid tax invoice and such specifications, plans and operating or maintenance manuals (or similar documents) relating to the trade-in equipment as are in the Customer's possession or control.</p>
<p>11. Scheduled Oil Sampling</p>	<p>If specified in the Contract that 'Scheduled Oil Sampling' will be provided in respect of the Goods then the Customer acknowledges that it will be</p>

	<p>registered with the Supplier as a participant in its scheduled oil sampling program in respect of the Goods and consents to that registration.</p> <p>The Customer also acknowledges that oil sampling will be undertaken by the Supplier for the purposes of this program after the first 250 hours of operation for the Goods and, thereafter, in accordance with the applicable operations and maintenance manuals or guides. The Customer agrees to cooperate reasonably with the Supplier in order to allow this oil sampling to be undertaken.</p> <p>Within a reasonable time after completion of each instance of oil sampling, the Supplier will provide the Customer with a written report of the results of that oil sampling. The report is intended to assist with predicting mechanical wear, however the Customer acknowledges that, to the extent permitted by law, the Supplier gives no guarantee or warranty in respect of any component failure or mechanical breakdown by conducting oil sampling or providing a report of the results to the Customer.</p> <p>Notwithstanding anything else in these Sales Terms, the Supplier limits its liability for a breach of a condition or warranty in respect of the supply of these oil sampling services to:</p> <ul style="list-style-type: none"> a. supplying the oil sampling again; or b. the payment of the costs of having the oil sampling services supplied again, <p>whichever the Supplier may elect.</p>
<p>12. Indemnity</p>	<p>The Customer indemnifies the Supplier against any Loss suffered or incurred by the Supplier in respect of:</p> <ul style="list-style-type: none"> a. death or personal injury to any person; b. damage to, or destruction or loss of, any property; or c. any other claims arising in connection with the Goods and Services, arising in connection with any wrongful act or omission by the Customer, including: d. a breach of the Contract; e. tort, including negligence or breach of a statutory duty; or f. a breach of equitable duty. <p>Any liability of the Customer to indemnify the Supplier under this clause 12 shall be reduced proportionally to the extent that a wrongful act or omission of the Supplier caused or contributed to the:</p> <ul style="list-style-type: none"> a. death personal injury to any person; or b. damage to, or destruction or loss of any property. <p>The Supplier need not incur any cost or make any payment before enforcing any right of indemnity under this clause 12. This indemnity is a continuing obligation and remains separate and independent from the other obligations of the parties and survives the termination of the Contract for whatever reason and continues in full force and effect.</p>
<p>13. Goods warranties</p>	<ul style="list-style-type: none"> • Manufacturer warranties: Goods are supplied in accordance with the manufacturer's specific warranty (if any). The applicable manufacturer's warranty statements are those referred to in the Contract. Copies of these warranty statements are available by request. To the extent permitted by law, and unless otherwise agreed in writing, the Supplier's sole responsibility with respect to warranties relating to Goods is to pass on to the Customer the benefit of the manufacturer's specific warranty (if any).

	<ul style="list-style-type: none"> • Other warranties: unless expressly notified by the Supplier to the Customer, the Supplier gives no warranty to the Customer in respect of Goods. The Supplier may offer a specific warranty in relation to specific Goods but the application of any such specific warranties must be confirmed in writing and signed by an authorised officer of the Supplier. Any applicable warranty statements are those specifically referred to in the Contract and copies of these statements are available upon request. • Used Goods: used Goods are sold in an 'as is' condition. No warranty of any kind is implied or given by the Supplier in relation to used Goods. <p>The Customer acknowledges that recommendations concerning performance, dimensional information, operating costs and application contained in the Contract, or any other communication prepared by the Supplier or its suppliers, including Caterpillar Inc., are intended as guidelines only. The Customer also acknowledges that, owing to the many variables peculiar to specific applications, neither the Supplier nor their suppliers, including Caterpillar Inc., expressly or implicitly warrant that the Goods will necessarily perform as estimated.</p>
14. Service standards and warranties	<p>The Supplier shall exercise reasonable skill, care and diligence in the performance of the Services. Any parts supplied by the Supplier in carrying out the Services are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the manufacturer's warranty statements are available on request. To the extent permitted by law, and unless otherwise agreed in writing, the Supplier's sole responsibility with respect to warranties relating to such parts is to pass on to the Customer the benefit of the manufacturer's specific warranty (if any).</p>
15. Exclusions	<p>To the extent permitted by law and except as set out in these Sales Terms:</p> <ol style="list-style-type: none"> a. all express and implied warranties, guarantees and conditions however arising are excluded; b. the Customer releases the Supplier from all claims arising in connection with the Goods and Services; c. the Customer acknowledges that it has not relied upon any representation made by the Supplier, which has not been stated expressly in these Sales Terms; d. the Supplier shall not be liable for any loss of production, loss of actual or anticipated profit, loss of overhead, loss of contract, loss of revenue or loss of opportunity, howsoever caused, including negligence or any other consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from Goods and Services or any defect; and e. any claims against the Supplier for other loss or damage of any kind including, without limitation, loss from failure of the Goods and Services to operate for any period of time, economic, moral, direct, immediate, special, indirect or consequential loss or damage are expressly excluded.
16. Liability of the Supplier	<p>Notwithstanding anything else in these Sales Terms, unless the Goods are goods of a kind ordinarily acquired for personal, household or domestic use or consumption, any liability of the Supplier to the Customer arising under statute which may not be excluded, restricted or modified by agreement is limited to an amount equal to:</p> <ol style="list-style-type: none"> a. the cost of replacing the Goods; b. the cost of obtaining an equivalent product; or c. the cost of having the Goods repaired, <p>whichever the Supplier may elect.</p>

	<p>Notwithstanding anything else in these Sales Terms, the Supplier also limits its liability for a breach of a condition or warranty in respect of the supply of Services to:</p> <p>d. supplying the Services again; or</p> <p>e. the payment of the costs of having the Services supplied again, whichever the Supplier may elect.</p> <p>Nothing in these Sales Terms is intended to exclude, restrict or modify rights which the Customer may have under the <i>Competition and Consumer Act 2010</i> (Cth) or otherwise which may not be excluded, restricted or modified by agreement.</p>
<p>17. General representations and warranties</p>	<p>The Customer acknowledges that the Supplier is relying on the representations and warranties made to it in connection with these Sales Terms.</p> <p>The Customer represents and warrants to the Supplier that:</p> <p>a. if it is a company:</p> <ul style="list-style-type: none"> (i) it is duly incorporated and validly existing under the laws of its place of incorporation; and (ii) it has the corporate power to own its own assets and to carry on its business as it is now being conducted; <p>b. it has taken all necessary action to authorise the execution, delivery and performance of the Contract, in accordance with its terms;</p> <p>c. it has power to enter into and perform its obligations under the Contract and to carry out the transactions contemplated by the Contract;</p> <p>d. its obligations under the Contract are valid and binding and are enforceable against it in accordance with their respective terms subject to any necessary stamping and registration, the availability of equitable remedies and laws relating to the enforcement of creditor's rights;</p> <p>e. the execution, delivery and performance of the Contract and the transactions under them do not:</p> <ul style="list-style-type: none"> (i) if applicable, breach its constitution or other constituent documents or any relevant trust deed or partnership agreement; (ii) breach any law or decree of any court or official directive which is binding on it; (iii) violate any other document or agreement to which it is expressed to be a party or which is binding on it or any of its assets; or (iv) cause a limitation on its powers or the powers of its directors or other officers to be exceeded; <p>f. no litigation, arbitration, tax claim, dispute or administrative or other proceeding (which has not been disclosed to the other party in writing) has been commenced, is pending or, to its knowledge, threatened in writing against it which is likely to have an adverse effect upon it or its ability to perform its financial or other obligations under the Contract;</p> <p>g. an Insolvency Event has not occurred in relation to it; and</p> <p>h. unless expressly stated, it does not enter into the Contract as a trustee.</p> <p>In these Sales Terms, an Insolvency Event means where the Customer:</p>

	<p>i. is insolvent, bankrupt or unable to pay its debts as they fall due;</p> <p>j. enters into an arrangement with its creditors;</p> <p>k. takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up or bankruptcy of the Customer; or</p> <p>l. has a winding-up or bankruptcy order made against it or passes a resolution for winding-up or bankruptcy.</p>
18. Confidentiality	<p>Subject to the exceptions set out in this clause 18, the Customer must keep secret, and confidential, and must not divulge or disclose any of the Supplier's confidential information, trade secrets, know how, scientific, technical, product, market or pricing information relating to the Supplier's business or the Contract (Confidential Information). The Customer must take all reasonable steps to ensure that any person to whom it discloses the Supplier's Confidential Information under the Contract does not make public, or disclose, the Confidential Information. The restrictions in this clause do not apply where the relevant Confidential Information:</p> <p>a. is public knowledge (other than as a result of a breach of the Contract);</p> <p>b. is required by law to be disclosed, provided the Customer has notified the Supplier of such requirement as soon as possible after becoming aware of such requirement; or</p> <p>c. is disclosed to the Customer's directors, officers, employees, financial advisers, analysts and legal representatives for the purpose of exercising rights under and performing the Contract.</p>
19. Privacy	<p>The Supplier is committed to protecting the privacy of individuals and is bound by the Australian Privacy Principles set out in the Privacy Act 1988 (Cth).</p> <p>When collecting, using, disclosing or otherwise handling a Customer's personal information, the Supplier will comply with its Privacy Policy available at http://www.hastingsdeering.com.au/home/!/privacy.</p> <p>The Customer agrees and acknowledges that the Supplier may obtain and use its personal information (as defined by the <i>Privacy Act 1988</i> (Cth)) in accordance with its Privacy Policy.</p>
20. Security Interests	<p>The Customer acknowledges that under these Sales Terms the Customer grants Security Interests to the Supplier including a retention of title in respect of the Goods (in accordance with clause 8). The Customer acknowledges that the Contract constitutes a security agreement within the meaning of the PPS Act.</p> <p>The Security Interests arising under these Sales Terms attach to the Goods (as applicable) when the Customer obtains possession of the Goods (as applicable) and the parties confirm that they have not agreed that any Security Interest arises under these Sales Terms at any later time.</p> <p>The Customer acknowledges that the Supplier may perfect its Security Interests by lodging one or more Financing Statements (as defined in the PPS Act) in each class/es of collateral determined by the Supplier on the Personal Property Securities Register established under the PPS Act.</p> <p>The Customer undertakes to do anything reasonably required by the Supplier to enable the Supplier to register its Security Interests, with the priority the Supplier requires, and to maintain the registration. The Customer agrees not to make an amendment demand under the PPS Act until its obligations under all Security Interests held by the Supplier have been fully satisfied. The Customer must pay the Supplier all registration and enforcement costs and expenses which the Supplier may incur in:</p>

	<p>a.preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interests that are granted to the Supplier under these Sales Terms;</p> <p>b.maintaining those registrations; and</p> <p>c.enforcing any Security Interests granted to the Supplier under these Sales Terms.</p>
21. Personal Property Securities Law	<p>The Supplier does not need to give the Customer any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded. The parties agree that neither party will disclose to an 'interested person' (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act. All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these Sales Terms except that in each case to the extent permitted by the PPS Act the following provisions of the PPS Act will not apply:</p> <p>a.section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;</p> <p>b.subsection 121(4) (enforcement of liquid assets – notice to grantor);</p> <p>c.section 125 (obligation to dispose of or retain collateral);</p> <p>d.section 130 (notice of disposal), to the extent that it requires the Supplier to give the Customer a notice;</p> <p>e.paragraph 132(3)(d) (contents of statement of account after disposal);</p> <p>f. subsection 132(4) (statement of account if no disposal);</p> <p>g.section 135 (notice of retention);</p> <p>h.section 142 (redemption of collateral); and</p> <p>i. section 143 (reinstatement of security agreement).</p>
22. Intellectual Property	<p>All intellectual property rights throughout the world, whether registered or unregistered, existing now or in the future, including copyright, patents, designs, trademarks, business names, domain names, know-how, confidential information, inventions, concepts, semi-conductor and circuit layouts, trade secrets, processes, methods and other analogous rights (Intellectual Property Rights) subsisting in the Goods, Services and any other thing prepared or developed as part of the supply by the Supplier contemplated by the Contract (Project IP) vest in the Supplier upon creation.</p> <p>All Intellectual Property Rights owned by the Supplier, or licensed to the Supplier by a third party, and which:</p> <p>a.are in existence prior to the date of this Contract; or</p> <p>b.came into existence other than in connection with this Contract,</p> <p>are Supplier IP and remain, the property of the Supplier or the relevant third party.</p> <p>All Intellectual Property Rights owned by the Customer, or licensed to the Customer by a third party, and which:</p> <p>c.are in existence prior to the date of this Contract; or</p> <p>d.came into existence other than in connection with this Contract,</p>

	<p>are Customer IP, and remain, the property of the Customer or the relevant third party.</p> <p>In respect of Goods, the Supplier, subject to any restrictions imposed by the relevant manufacturer's warranty, grants the Customer a royalty-free, non-exclusive, revocable licence to use and copy the Project IP and the Supplier IP for the sole purposes of the Customer operating, maintaining and repairing the Goods. In respect of Services, upon completion and receipt of payment in full by the Supplier for the Services (in accordance with the terms of this Contract), the Customer is granted a royalty-free, non-exclusive and revocable licence to use the Project IP created or developed by the Supplier in respect of the Services for the purpose as expressly set out or otherwise contemplated by the Contract. In the event of early termination of the Contract, any Project IP (or copies thereof) shall be returned forthwith by the Customer to the Supplier and all electronic copies held by the Customer must be deleted.</p>
23. Termination	<p>It is a Termination Event if:</p> <ul style="list-style-type: none"> a. any amount payable by the Customer to the Supplier is not paid when due; b. the Customer makes any false representation (whether by act or omission) in respect of the Goods or Services; c. the Customer breaches or fails to comply with any term of the Contract; d. an Insolvency Event occurs with respect to the Customer; e. a change in control of the Customer occurs.
24. Supplier's remedies on termination	<p>If a Termination Event occurs the Supplier is entitled (without prejudice to any other right or remedy) at its option to immediately do any one or more of the following:</p> <ul style="list-style-type: none"> a. declare all amounts actually or contingently owing by the Customer to the Supplier (including for any Services performed but not already paid for), whether or not due and payable, to be immediately due and payable; b. refuse to supply Goods or Services to the Customer; c. terminate the Contract; or d. repossess and remove all Goods for which title has not passed to the Customer in accordance with clause 8.
25. Cancellation	<p>The Customer has no right to cancel or suspend the supply of Goods or Services contemplated by the Contract. If the Customer nevertheless purports to cancel or suspend such a supply then, in addition to any other rights that the Supplier may have under the Contract (including these Sales Terms) or at law, the Customer must indemnify, and keep indemnified the Supplier against any Loss incurred by the Supplier arising from the purported cancellation or suspension, including any loss of actual or anticipated profit, loss of overhead, loss of contract, loss of revenue or loss of opportunity. The Supplier need not incur any cost or make any payment before enforcing any right of indemnity under this clause 25. This indemnity is a continuing obligation and remains separate and independent from the other obligations of the parties and survives the termination of the Contract for whatever reason and continues in full force and effect.</p>
26. Notices	<p>All notices and other documents given or required to be given pursuant to this Contract must:</p> <ul style="list-style-type: none"> a. be in writing and in clear legible English; b. signed by a person duly authorised by the sender; and

	c. be delivered by prepaid post, by hand or by facsimile to the party to whom the notice is addressed at its address shown in this Contract, as applicable, or such other address as it may have notified to the other party.
27. Authorisation	Any person executing the Contract on behalf of the Customer as an authorised representative declares that he or she is duly authorised to execute this document and agree to the terms of the Contract on behalf of the Customer and is not aware of any fact or circumstance that might affect his or her authority to do so.
28. General	<p>The Supplier may transfer, assign, novate or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Customer. The Customer's rights and obligations arising out of or under the Contract are not assignable by the Customer without the Supplier's prior written consent.</p> <p>The Customer must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to the Supplier) required by law or reasonably requested by the Supplier to give effect to these Sales Terms or any obligation under them. Waiver of any right by the Supplier arising from a breach of these Sales Terms by the Customer or on the occurrence of a Termination Event must be in writing and executed by the Supplier. A failure to exercise, a delay in exercising, or a partial exercise of, a right by the Supplier created under or arising from a breach of these Sales Terms or on the occurrence of a Termination Event does not result in a waiver of that right. These Sales Terms are not intended to create a partnership, joint venture or agency relationship between the parties. A provision of, or the application of a provision of, these Sales Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or the remaining provisions in that or any other jurisdiction. Where a clause in these Sales Terms is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these Sales Terms.</p>
29. Governing Law	These Sales Terms are governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.
30. Interpretation	<p>In these Sales Terms:</p> <p>a. The singular includes the plural and the plural includes the singular.</p> <p>b. The word 'includes' in any form is not a word of limitation.</p> <p>c. Words of any gender include all genders.</p> <p>d. Other parts of speech and grammatical forms of a word or phrase defined in these Sales Terms have a corresponding meaning.</p> <p>e. An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.</p> <p>f. A reference to a clause, party, schedule or attachment is a reference to a clause of, and a party, schedule or attachment to, these Sales Terms and a reference to these Sales Terms includes any schedule and attachment.</p> <p>g. A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.</p> <p>h. A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.</p>

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

2. HD ADVANTAGE TERMS AND CONDITIONS

1. Scope of Supply

1.1 HD Advantage is the supply of condition monitoring services (the Services) on purchased Caterpillar machines (the Machine) which include, where applicable:

- a) preventative maintenance alerts;
- b) major machine fault code recommendations; and
- c) major oil analysis recommendations.

1.2 As part of supplying the Services, the Supplier will provide the Customer with access to the Supplier's team of industry experts including a dedicated support desk to provide data driven insights, advice and recommendations.

2. Terms Governing the Supply of Services

2.1 The Services will be provided in accordance with the following terms and conditions:

- a) the General Terms and Conditions of Sale for Equipment and Engineering Services;
- b) the Equipment Protection Plan (EPP) Terms and Conditions; and
- c) these HD Advantage Terms and Conditions.

Any capitalised terms in this document shall have the same meaning as defined within the terms listed above.

3. Fees

3.1 The supply of the Services shall be free of charge (and includes subscription fees as specified below) to the Customer for twelve (12) months from the Commencement Date of this Contract or until the expiry of any EPP term (Initial Term).

3.2 The subscription fees covered by the Supplier for the Initial Term include the following:

- a) On PL 2 Series Productlink devices: complimentary subscription to my.cat.com; and
- b) PL & PLE 6 and 7 series Productlink devices: complimentary subscription to Visionlink Daily.

3.3 If additional Visionlink subscriptions are required to enable the Customer to access the Services provided by the Supplier, the Customer agrees to pay any additional fees as required.

3.4 In order to continue to receive the Services following the Initial Term, the Customer agrees to pay subscription fees and/or fees for ongoing supply of the Services as advised by the Supplier following the expiry of the Initial Term (Extended Term).

4. Customer Obligations

4.1 In order to maintain eligibility to receive the Services, the Customer must commit to the following:

- a) procuring 100% of required scheduled oil sampling and analysis for the Machine (as specified in the Operation and Maintenance Manual) from the Supplier. The Customer is responsible for collection of oil samples. The Supplier shall provide instruction on appropriate sampling protocol;

- b) purchasing 100% of required preventative maintenance parts for the Machine as specified in the Operation and Maintenance Manual from the Supplier; and
- c) providing the Supplier with the opportunity to quote on all additional parts, servicing and components for the Machine for the duration of the Initial and Extended Term.

4.2 One (1) TA1 inspection must be conducted by the Customer and/or the Supplier's representative on the Machine using Cat® Inspect at least once per year until the expiry of the Initial or Extended Term as applicable, to determine the condition of the Machine.

4.3 If the Customer is not meeting eligibility requirements as set out in this clause 4, the Supplier will work with the Customer in order to assist the Customer to meet its obligations.

4.4 If after the following quarterly review the Customer is still not meeting the eligibility requirements as set out in this clause 4, the Supplier reserves the right to terminate the Services upon providing the Customer seven (7) days' notice.

5. Failures

5.1 If the Machine does not provide data for three (3) days the Supplier's representative will call the Customer to diagnose the fault through troubleshooting.

5.2 If the failure is determined to be the fault of the Customer, the Supplier will conduct any required repairs at the cost of the Customer (upon receipt of a purchase order from the Customer).

6. Product Support

6.1 For the duration of the Initial and Extended Terms, the Supplier's Technology Support Desk (TSD) shall provide technical support for general issues and trouble-shooting relating to the Services.

7. Termination

7.1 Either party may terminate the Contract within the Initial or Extended Term by providing the other party with at least seven (7) days' notice.

8. Data Governance

For the purpose of collecting and utilising Customer data in accordance with the delivery of the Services, the Customer agrees that it has read and executed the Caterpillar Data Governance Consent Form annexed.

The Customer also consents to the Supplier having the same access to Machine and Customer data for the purpose of supplying the Services

