



## 1 INTERPRETATION

- 1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:

“**Associate**” has the same meaning as given to that term in the *Corporations Act 2001*;

“**Australian Consumer Law**” means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

“**Attaches**” has the same meaning as given to that term in the PPSA;

“**Buyer**” means the person, firm or company that has offered to purchase any Goods or Work identified in the Order, and includes any servant, agent, partner, contractor or employee of the Buyer;

“**Collateral**” has the same meaning as given to that term in the PPSA;

“**Conditions**” means the General PrimeServ Terms and Conditions set out herein;

“**Consumer**” has the meaning given to it in section 4B and Schedule 2, section 3 of the Australian Consumer Law;

“**Contract**” means any contract for Work between the Buyer and MDT;

“**Financing Change Statement**” has the same meaning as given to that term in the PPSA;

“**Financing Statement**” has the same meaning as given to that term in the PPSA;

“**Goods**” means goods supplied by MDT (as defined in MDT’s tender or order acknowledgement);

“**IPRs**” means any intellectual property rights of any nature including without limitation any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;

“**MDT**” means MAN Diesel & Turbo Australia Pty Ltd and its associates which supplies the Goods and/or performs the Services under the Contract, and includes any servant, agent, partner, Associate, contractor or employee of MDT;

“**Order**” means an order placed by the Buyer with MDT for Work;

“**Perfectd**” has the same meaning as given to that term in the PPSA;

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

“**PPS Law**” means:

- (a) the PPSA;
- (b) any regulation made pursuant to the PPSA; and
- (c) any amendment from time to time made to any other legislation or regulation as a consequence of a PPS Law referred to in paragraph (a) or (b) of this definition;

“**Purchase Money Security Interest**” has the same meaning as given to that term in the PPSA.

“**Registration Commencement Time**” has the same meaning as given to that term in the PPSA;

“**Security Interest**” means:

- (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (b) a security interest as defined in the PPSA; or
- (c) any document that grants or creates anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority over any other creditor with respect to any asset or an interest in any asset;

“**Services**” means services supplied by MDT (as defined in MDT’s tender or order acknowledgement);

“**Site**” shall mean the place where the Services are to be performed by MDT together with so much of the area surrounding the said place as MDT shall actually use in connection therewith;

“**Verification Statement**” has the same meaning as given to that term in the PPSA;

“**Work**” means Goods and/or Services; and

“**\$**” or “**dollars**” is a reference to the lawful currency of Australia.

- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

- 1.3 A reference to “including” means “including without limitation”.

- 1.4 Any agreement, warranty, representation or obligation which binds or benefits 2 or more persons, binds or benefits those persons jointly and severally.

## 2 FORMATION

- 2.1 All tenders are made and Orders are accepted by MDT subject to these Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Buyer purports to

apply under any Order. To the extent that there is any inconsistency between any Contract and these Conditions, these Conditions shall apply. Variations to the terms of any Contract will only be effective if agreed in writing. If any such agreed variation increases the time or cost to MDT of performing the Contract then the Contract price and/or programme will be adjusted accordingly.

- 2.2 These Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance.
- 2.3 Orders from Buyer are only binding on MDT after a written order acknowledgment has been issued by MDT and only on the conditions stated in the order acknowledgment. MDT may refuse to accept an Order or part of an Order without giving reason.
- 2.4 All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only binding to the extent expressly stated in the order acknowledgment or in other documents forming part of the Contract expressly referring to such information.

## 3 DELIVERY, NON-DELIVERY, DELAY AND RISK

- 3.1 Unless otherwise expressly agreed in writing by MDT:
- (a) delivery times accepted by MDT are given in good faith but are an estimate only; and
  - (b) delivery of the Goods is made “Ex Works” in accordance with Incoterms 2010, but the delivery price is exclusive of packing, which will be charged extra. To the extent of any inconsistency between the Incoterms 2010 and these Conditions, these Conditions shall prevail.
- 3.2 Performance of the Services shall be at the Site specified in MDT’s tender or order acknowledgement.
- 3.3 MDT may deliver Goods in instalments and perform Services in sections in any sequence. Default by MDT, howsoever caused, in respect of one or more instalments and/or sections shall not entitle the Buyer to terminate the relevant Contract as a whole.
- 3.4 Risk

The risk in the Goods passes to the Buyer on delivery to the Buyer or into custody on the Buyer’s behalf, including but not limited to delivery to the Buyer’s agent or carrier, provided that where:

- (a) the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order; or
- (b) MDT agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer; or
- (c) the Buyer fails to provide any instructions, consents or authorisations required to enable the Goods to be delivered on the due date;

the risk in the Goods shall pass immediately to the Buyer, delivery of the Goods shall be deemed to have taken place and MDT may store or arrange for storage of such Goods and charge the Buyer for all related costs and expenses (including storage, insurance, reasonable costs and interest) and may sell such Goods after 28 days after such failure or refusal and deduct any monies payable to MDT by the Buyer from the sale proceeds and charge the Buyer for any shortfall below the Contract price.

- 3.5 Shortages and Non-Delivery

Upon delivery to the Buyer, all Goods should be examined. MDT shall not be liable for any shortages in, or non-delivery of Goods unless the same is notified by the Buyer to MDT (together with all specific details) in writing within ten (10) days of the actual date of delivery. Subject to such notice being provided MDT shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of MDT, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods and this shall be the Buyer’s only remedy and in lieu of all other rights and remedies which might otherwise be available to the Buyer. Shortages in, or non-delivery of some or part of the Goods shall not affect the Contract in respect of the other or other parts of the Goods.

- 3.6 Delay

If the contractual delivery time for the Work or part of the Work is delayed and this delay was caused by negligence or intention of MDT and if the Buyer has suffered a loss caused by such delay, the Buyer shall to the exclusion of any other claims based on delays in respect of contractually agreed dates, be entitled to claim liquidated damages for default for each full week of delay of delivery at a maximum of 0.5% of the Contract net price of the delayed part of the Work but the liquidated damages shall only be payable from the period starting two weeks after the contractual delivery time (Grace Period). The liquidated damages for delay will be limited to a maximum of 5% (five per cent) of the Contract net price of the delayed part of the Work.

Liquidated damages shall be Buyer’s sole and exclusive measure of damages and remedy against MDT with respect to the failure to achieve the contractual delivery time for the Work.

The Buyer acknowledges that:

- (a) liquidated damages under this clause 3.6 represent a genuine pre-estimate of the costs and losses likely to be incurred by the Buyer if the delay of delivery of Goods was caused by the negligence or intention of MDT; and
- (b) any such amounts payable are not to be construed as a penalty.

#### 4 PROPERTY

##### 4.1 Retention of Title

Property in the Goods will remain with MDT and will not pass to the Buyer until such time when the Buyer pays all monies owing to MDT by the Buyer, on all accounts and under any contract (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place of or representing the Buyer).

##### 4.2 Covenants

While the Goods remain the property of MDT, the Buyer agrees with MDT that:

- (a) the Buyer holds the Goods as fiduciary bailee of MDT;
- (b) the Goods will be stored separately so that they are readily identifiable as the property of MDT;
- (c) the Buyer will not dispose of the Goods except with MDT prior written consent or in the ordinary course of the Buyer's business;
- (d) the Buyer will hold all money received, relating to the sale of MDT Goods in a separate account on trust for MDT and will pay such monies immediately on request to MDT;
- (e) the Buyer will not cause the Goods to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with MDT prior written consent;
- (f) the money received for the sale of any intermingled goods, which contain the Goods of MDT, will be held in trust for MDT (to the maximum extent that such "trust" monies represent the total outstanding debt owed to MDT on all accounts by the Buyer (and will pay such monies immediately on request to MDT);
- (g) the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation MDT owes to the Buyer;
- (h) the Buyer cannot claim any lien over the Goods;
- (i) the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party, except with MDT prior written consent;
- (j) pending payment in full for all amounts owed by the Buyer to MDT on all accounts, the Buyer:
  - (i) subject to clause 4.4 must not allow any person to have or acquire any Security Interest in the Goods;
  - (ii) must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
  - (iii) must not remove, deface or obliterate any identifying mark or number on any of the Goods; and
  - (iv) must not move the Goods from the Buyer's premises.

##### 4.3 MDT's Rights

If the Buyer fails to pay for any Goods within the period of credit extended by MDT to the Buyer:

- (a) MDT may recover possession of all Goods (in which property has remained with MDT) at any site owned, possessed or controlled by the Buyer and the Buyer agrees that MDT has an irrevocable licence to do so without incurring any liability to the Buyer or any person claiming through the Buyer;
- (b) if required, the Buyer will assign to MDT any rights of the Buyer to any outstanding money relating to the re-supply of the Goods. The Buyer irrevocably appoints MDT or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to MDT under this clause 4.3, where the Buyer has failed to do so within seven (7) days of receiving written notice to do so, and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts.

##### 4.4 PPSA Further Assurances

Clause 4.4 shall be only applicable for Goods located in the jurisdiction of the Australian or where the grantor of a security interest is an Australian entity.

- (a) If MDT determines that a PPS Law applies, or will in the future apply, to any agreement that incorporates these Terms and Conditions of Sale (**Supply Agreement**) or the supply of any Goods, then the Buyer must promptly upon request from MDT:
  - (i) do anything (including obtaining consents, making amendments to the Supply Agreement or executing a new Supply Agreement) for the purposes of:
    - (A) ensuring that any Security Interest created under, or provided for by, the Supply Agreement:

- attaches to the collateral that is intended to be covered by that Security Interest;
- is enforceable, perfected, maintained and otherwise effective; and
- any Security Interest created under, or provided for by, the Supply Agreement has the priority contemplated by that Supply Agreement; or

(B) enabling MDT, on and from the Registration Commencement Time, to prepare and register a financing statement or financing change statement; or

(C) enabling MDT to exercise any of its powers in connection with any Security Interest created under, or provided by, the Supply Agreement; and

(D) provide any information requested by MDT in connection with the Supply Agreement to enable it to exercise any of its powers or perform its obligations under the PPS Law.

(b) Except if section 275(7) of the PPSA applies, each of MDT and the Buyer agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.

(c) Where the Goods supplied under the Supply Agreement are not used predominantly for personal, domestic or household purposes, the Buyer agrees that, on and from the Registration Commencement Time:

(i) MDT is under no obligation to dispose of or retain any secured property MDT seize within a reasonable time under section 125 of the PPSA;

(ii) following a default, the Buyer has no rights to redeem the secured property under section 142 of the PPSA;

(iii) the Buyer has no rights to reinstate this document following a default under section 143 of the PPSA; and

(iv) despite the Buyer paying for particular Goods itemised in an invoice or order or otherwise in respect of moneys owing under or in connection with the Supply Agreement, any payments received by MDT from the Buyer shall be applied in the following order:

(A) first, to satisfy any obligations owed by the Buyer to MDT which are unsecured, in the order in which the obligations were incurred;

(B) second, to satisfy any obligations that are secured but which are not secured by a Purchase Money Security Interest, in the order in which the obligations were incurred; and

(C) third, to satisfy any obligations that are secured by a Purchase Money Security Interest, in the order in which the obligations were incurred.

(d) Where the Goods supplied under the Supply Agreement are not used predominantly for personal or domestic purposes, on and from the Registration Commencement Time, the Buyer waives its rights to receive:

(i) a notice of MDT's proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;

(ii) a notice of MDT's proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;

(iii) a notice of MDT's proposal to dispose of any PPSA personal property under section 130 of the PPSA;

(iv) details of the amounts paid to other secured parties in a statement of account provided by MDT under section 132(3)(d) of the PPSA;

(v) a statement of account under section 132(4) of the PPSA; and

(vi) a copy of, or notice of, any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to any Security Interest under, or provided for by, the Supply Agreement.

(e) Anything that is required by MDT to be done under this clause 4.4 shall be done by the Buyer at its own expense. The Buyer agrees to reimburse the costs of MDT in connection with any action taken by MDT under or in connection with this clause 4.4.

#### 5 PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS

5.1 Unless otherwise agreed, quotations and tenders lapse after 30 days from their date.

5.2 Unless fixed prices have been agreed in writing by MDT, all sales are made at the prices valid at the date of MDT's tender or the date of MDT's order acknowledgement (as the case may be).

5.3 MDT shall neither be entitled nor obliged to implement changes in the scope of supply, before the Parties have reached an agreement regarding the corresponding adjustment of the Contract price and the delivery time.

5.4 Unless otherwise agreed in writing by MDT prices set out in any of MDT's price lists, tenders or order acknowledgement are Ex Works (Incoterms 2010) and exclusive of any taxes, duties, fees, charges or similar and any costs of

carriage, package and insurance which shall be payable in addition to the price.

- 5.5 Unless otherwise agreed by MDT in writing, sums payable by the Buyer to MDT shall fall due and be effected by the Buyer net cash not later than 30 days after the date of the invoice. If any sum payable under the Contract is not paid when due then without prejudice to MDT's other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 6% per annum over the Cash Rate Target of the Reserve Bank of Australia in force on the due date of payment.

## 6 PROVISION OF SERVICES

- 6.1 Unless otherwise expressly agreed in writing Services rendered by MDT shall be charged on time basis in accordance with MDT's general rates for personnel valid at the date of the provision of the Services. Such rates are exclusive of board, lodging and transportation and such other facilities as are to be provided by the Buyer free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by MDT's personnel shall be borne by the Buyer. Unless otherwise agreed MDT's execution of Services is subject to manual assistance being rendered by the Buyer either through engine room staff or other persons made available by the Buyer.

- 6.2 The taking-over of the Works by the Buyer shall be deemed to have taken place at the latest, when the Buyer has received MDT's notice that the Work has been completed, provided that the Work is as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Work shall not prevent taking-over. The period, referred to in clause 7.1 shall start to run at the latest when the Work is ready for taking-over in accordance with this clause 6.2.

## 7 WARRANTY

- 7.1 Guarantees and liabilities of Seller under the Australian Consumer Law

- (a) Only in the cases where the Australian Consumer Law is applicable (*in particular (aa) because the Buyer is a Consumer who acquires the goods & services as a consumer, including in business to business transactions where (i) the price is under \$ 40,000, (ii) goods are of a kind commonly acquired for personal domestic or household use or (iii) goods are a vehicle or trailer acquired for personal use in transport of goods, and (bb) because the goods are not purchased to be resold or to be used up in a manufacturing or repair process*) and the guarantees and liabilities under the Australian Consumer Law cannot be lawfully excluded, restricted or modified, **MDT goods will come with guarantees that cannot be excluded under the Australian Consumer Law and therefore the Consumers/Buyer are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Consumers are 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.**
- (b) Except only for clause 7.1 (a), those rights and remedies that the Buyer has in respect of the Goods under the Competition and Consumer Act 2010 (Cth) and similar state and territory laws applicable to Consumers in Australia and which cannot be lawfully excluded, restricted or modified (**Non-excludable Rights**):
- (aa) notwithstanding any other provision of this contract, the liability of MDT to the Buyer, whether arising under or in connection with the contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby excluded; and
- (bb) MDT is not liable to the Buyer for any loss which the Buyer suffers, incurs or is liable for in connection with the supply of the Goods under a contract, except in accordance with clause 10.
- (cc) To the extent permitted by law, MDT's liability in respect of any Non-excludable Rights shall be limited at its option either to in respect of Goods, the repair or replacement of the Goods or the cost of repairing or replacing the Goods provided that such Goods are returned to MDT in their delivered state at the Buyer's expense if so requested by MDT within twelve (12) months from the date of their delivery. MDT shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect. Clause 7.1 shall be the Buyer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Buyer.
- (c) If the Australian Consumer Law is applicable and the guarantees and liabilities under the Australian Consumer Law cannot be lawfully excluded, restricted or modified and MDT has to guarantee for the goods & services under the Australian Consumer Law, the benefits and warranties under clause 7.2 shall not apply.

- 7.2 Australian Consumer Law does not apply

- (a) Subject to clause 7.1 MDT warrants for a period of six (6) months from the date the Goods were delivered, that such Goods shall be free from substantial defects in materials or manufacture.
- (b) The warranty given in clause 7.2 (a) will not apply:
- (aa) where the defect complained of arises from any drawing, design, specification or intellectual property right supplied by the Buyer or arises from normal wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without MDT's approval or arises from any failure to follow MDT's advice (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods), or misuse or alteration or repair of the Goods without MDT's approval;
- (bb) if MDT or its agents is not given a reasonable opportunity to safely inspect the Goods;
- (cc) if the total price for the Goods has not been paid by the due date for payment; or
- (dd) if the Goods supplied by MDT are mounted in a MDT engine for which the Buyer has also used unoriginal parts (i.e. parts which have not been supplied through MDT or through a MDT licensee), in which case MDT does not assume any liability for any damage which may arise.

Subject to clause 7.1, MDT makes no other express or implied warranties or guarantees and the obligations of MDT under the Contract are limited such that in the event of a breach by MDT of the warranty in clause 7.2 or any defect in any Goods MDT shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Goods) at its option either to:

- (aa) credit the price (if already paid) attributable to the faulty Goods or Services; or
- (bb) repair, rectify or replace the faulty Goods or Services.

MDT provided that such Goods are returned to MDT in their delivered state at the Buyer's expense if so requested by MDT within twelve (12) months from the date of their delivery MDT shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect

- 7.3 Any replacement Goods will be warranted on the terms set out in this clause 7.

## 8 FORCE MAJEURE

- 8.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions, war, acts of terror or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable to MDT if a sub-supplier of MDT is affected by such event and/or in case the Party concerned is already in default.
- 8.2 The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

## 9 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 9.1 The Buyer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specifications relating thereto either (a) supplied by or on behalf of MDT to the Buyer in connection with Work, or (b) resulting from Work, unless otherwise expressly agreed by MDT in writing. If the Buyer shall in any way acquire any such rights then the Buyer shall immediately inform MDT and shall forthwith take such steps as may be required by MDT to assign such rights or vest such title in MDT.
- 9.2 MDT shall have the right to apply any trademarks, trade names and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of such trademarks, trade names and/or service marks. The Buyer shall not deface, remove or obliterate any trademarks, trade names or logos applied by MDT on or in relation to the Goods.
- 9.3 The Buyer shall keep confidential and not use, without the prior written consent of MDT, all or any information including without limit, those supplied by MDT to the Buyer or disclosed to or obtained by the Buyer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer, or disclosure of the same is required by law or by any other governmental or other regulatory body.
- 9.4 In the event that MDT bases the production of the Goods on its own specifications, MDT shall under the exclusion of any further liability warrant that such Goods do not interfere with IPRs published in USA and/or by the European Patent Office. This shall not apply, if MDT has manufactured the Goods in accordance with drawings, models or other equivalent descriptions or information provided by the Buyer. As far as MDT is not liable pursuant to this clause 9.4, the Buyer shall indemnify MDT from all third-party claims. If MDT receives notice of an infringement of a third party's IPRs, the Buyer shall take

all action and render all assistance requested by MDT in connection with the infringement notice, at the Buyer's cost.

## 10 LIMITATION OF LIABILITY

- 10.1 There shall be no claims that are not provided for in this Contract. Save as expressly stated herein all warranties, terms and conditions whether express or implied by statute, common law usage trade custom or otherwise are hereby expressly excluded to the fullest extent permitted by law. Therefore to the extent to which MDT is entitled to do so under statute, common law usage trade custom or otherwise, MDT shall in no event be liable to the Buyer, by way of indemnity or by reason of any breach of contract or statutory duty or in tort or otherwise, for any and all claims, losses, damages such as but not limited to (i) any loss of use of any Part (or all) of the works or the Products, (ii) any loss of hire, business contracts, revenues or anticipated savings, (iii) damage to the Buyer's reputation or goodwill, (iv) any loss resulting from any claim made by any third party, (v) loss of production, loss of profit, (vi) default under any business contracts and/or for any indirect or consequential loss or damage which may be suffered by the Buyer in connection with the Contract.
- 10.2 Without prejudice to Conditions 3.5, 3.6, 7 and 10.1 and subject to any right that a Consumer may have under the Australian Consumer Law MDT's total liability for each Order in contract, tort, law or otherwise shall be limited to the value of that Order.

## 11 LIMITATION OF ACTIONS

To the extent permitted by law and without prejudice to clause 10, the limitation period applicable to any claims of the Buyer against MDT, besides warranty claims to which clause 7 applies, shall be limited to 24 months after delivery of the Goods or Services to the Buyer.

## 12 TERMINATION

- 12.1 If the Buyer fails to make any payment when due or to perform any of its other obligations on time, MDT shall be entitled to suspend its performance of the Contract until the failure is remedied; and regardless of whether MDT elects to suspend performance:
- the time for performance of the Contract by MDT shall be automatically extended accordingly; and
  - any cost (including financial costs and storage, demurrage or other charges) thereby incurred by MDT shall be paid by the Buyer.
- 12.2 Without prejudice to any of its other rights MDT may immediately terminate the Contract if any of the following occurs or is likely to occur:
- suspension under clause 12.1 continues for more than 120 days;
  - the Buyer is in breach of any of its obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from MDT; or
  - the Buyer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any other jurisdiction or the Buyer ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due.
- 12.3 Upon termination, howsoever arising, MDT shall be entitled forthwith to cease any further work under the Contract without any liability to the Buyer. Without prejudice to MDT's other remedies under the Contract, within 14 days of such a notice of termination, howsoever arising, the Buyer shall pay to MDT:
- the outstanding balance of the Contract price of the Work which has been delivered or performed, and
  - the costs incurred or committed by MDT up to the date of notice of termination in performing such work which is not yet completed plus a reasonable margin to be agreed between the Parties which shall not be less than 15% of the Contract price, and
  - the costs reasonably incurred by MDT as a result of the termination.
- 12.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of clauses 4.4, 7, 8, 9, 10, 11, 12, 13 and 14.

## 13 BUYER'S OBLIGATIONS

- 13.1 The Buyer shall provide MDT's personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be carried out and ensure that they have free access to the Site.
- 13.2 The Buyer shall provide MDT's personnel with unobstructed and safe access to the Site to enable them to perform the Work in accordance with the Contract.
- 13.3 The Buyer shall be responsible for ensuring the health and safety of MDT's personnel whilst on the Site. The Buyer shall take appropriate measures to protect MDT's personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When MDT is to carry out the Work on the Site, the Buyer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies.
- 13.4 MDT may, at its sole discretion, refuse to perform the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/ or where the Buyer is in breach of this clause 12 and MDT shall not be liable under the Contract for any delay in or failure of delivery in

such event.

- 13.5 The Buyer shall assume all responsibility for all acts or omissions of the Buyer's personnel in connection with these Conditions and MDT shall have no liability with respect thereto.
- 13.6 The Buyer shall provide all tools, test equipment and test facilities unless specifically stated otherwise in the Contract. Where MDT does supply tools then the Buyer shall give all necessary assistance with the customs formalities required for the import and re-export of MDT's tools and equipment free of all Taxes.
- 13.7 The Buyer shall to the best of its ability assist MDT in obtaining all necessary information concerning such local laws and regulations as are applicable to MDT's performance of the Services.
- 13.8 The Buyer shall specify a firm delivery address for the ordered Goods at least within 3 weeks after receipt of MDT's written confirmation of the date of readiness for dispatch. In case Buyer fails to do so, MDT is entitled to sell the Goods selected for delivery to the Buyer to a third party and to set forth a new delivery time to be forwarded to the Buyer for information. In such case the Buyer is not entitled to claim liquidated damages according to clause 3.6.

## 14 GENERAL

- 14.1 MDT and the Buyer shall only be entitled to assign or sub-contract any of its rights or the obligations under the Contract with the prior written consent of the other.
- 14.2 If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect. The Parties are committed to replace the invalid provision by another - with respect to the commercial effect - equivalent provision, in so far as this is possible.
- 14.3 The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of New South Wales, Australia, excluding the rules of conflicts of law. The application of the Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Goods ("CISG") shall be excluded.

All disputes arising out of or in connection with the Contract and these Conditions, including any question regarding their existence, validity or termination, shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such rules. The arbitration proceedings shall take place in Sydney, Australia. The procedural law of this place shall apply where the Rules are silent. Each Party shall nominate one arbitrator for confirmation by the competent authority under said rules. Both arbitrators shall agree on the third arbitrator within 30 days. Should the two arbitrators fail, within the above time-limit, to reach agreement on the third arbitrator, he shall be appointed by the ICC. The language to be used in the arbitration proceeding shall be English.

## 15 INDEMNITY

The Buyer indemnifies and holds MDT harmless against:

- all liabilities, direct loss, damages, costs or expenses incurred or suffered by MDT; and
- all actions, proceedings, claims or demands made against MDT; as a direct or indirect result of any action by the Buyer or arising under or in connection with these Conditions, or the supply of Goods or Services by MDT.

## 16 WAIVER

Failure by MDT to enforce any of these Conditions shall not be construed as a waiver of any of MDT's rights hereunder or a waiver of a continuing breach.

## 17 ACCEPTANCE

- 17.1 Acceptance by the Buyer of these Conditions as amended from time to time by MDT may be by any one of the following ways:
- by signing and returning to MDT a copy of these Conditions or an order confirmation with reference to these Conditions;
  - by performing an act that is done with the intention of adopting or accepting these Conditions after receiving these Conditions, including but not limited to continuing to order Goods; or
  - by oral acceptance.
- 17.2 Failure to accept these Conditions within seven (7) days of receipt by the Customer of these Conditions may result in the immediate withdrawal of MDT's offer to supply Training Services.