

TERMS & CONDITIONS – MAINTENANCE SERVICES

1. DEFINITIONS

- a) VAE Group Pty Ltd and any of its subsidiaries shall hereinafter be referred to as "**VAE Group**".
- b) The person, firm or company with whom VAE Group shall enter into a contract shall hereinafter be referred to as "the Customer".
- c) "**Offer**" shall mean the quotation or tender provided to the Customer by VAE Group together with these terms and conditions of contract.
- d) "**Price**" means the price to be paid by the Customer for the Products.
- e) "**Products**" means the products described and referred to in the Offer annexed to these terms and conditions, which has been provided by VAE Group to the Customer.

2. GENERAL

- a) If the Customer shall verbally place an Order, a contract shall be deemed to have been made immediately upon acceptance by VAE Group and shall only be subject to alterations in strict accordance with the terms and conditions contained herein.
- b) VAE Group may, in its sole discretion, choose to act on a verbal acceptance of the Offer by the Customer.
- c) These terms and conditions shall form part of and shall govern any contract entered into between VAE Group and the Customer, unless they shall have been specifically modified or rescinded by VAE Group in writing prior to VAE Group's acceptance of the Order.
- d) In the event that there is any conflict between these terms and conditions and the Offer then these terms and conditions shall prevail to the extent of any inconsistency.
- e) The Customer may place an order ("Order") with VAE Group in accordance with the Offer. On acceptance of the Order by VAE Group, the parties shall be contractually bound and these terms and conditions shall be incorporated into, shall take precedence over any terms and conditions on which the purchaser may trade and will form part of the contract between the parties.
- f) Unless otherwise specified in writing an Offer is to remain open for 30 days from the date of delivery.
- g) Prior to receipt of an Order, VAE Group reserves the right to make any changes to the Offer as it considers necessary.

3. EXCLUSIONS

- a) No dealing between VAE Group and the Customer shall be or be deemed to be a sale by sample.
- b) Subject to terms implied by law and not capable of exclusion VAE Group does not warrant the fitness for the Customer's purpose of any Product.
- c) The Customer will rely on its own knowledge and expertise in selecting any Product and as to the suitability and fitness for any required purpose of any Product.
- d) The Customer acknowledges that VAE Group has not made any warranty, guarantee or representation in relation to the Products on which the Customer has relied (including as to the fitness of the Products or any part of the Products for a particular purpose), apart from those which it has expressly received in writing from VAE Group.
- e) Unless otherwise required by law, any warranty provided by VAE Group will be for a period of 12 months in relation to any Product and both VAE Group and the Customer agree that a period of 12 months from the date of supply or despatch of the Product is a reasonable warranty period.

4. PLACEMENT OF ORDERS

- a) If any dispute arises over an Order, VAE Group's records will be conclusive evidence of what was ordered.
- b) (b) On the placement of each Order, the Customer represents to VAE Group that it is solvent and able to pay all of its debts as and when they fall due.
- c) (c) In addition to the Customer's obligations on completion of any credit application which VAE Group may require, the Customer shall inform VAE Group when an Order is placed, of any material facts, which might reasonably affect any decision to accept the Order or grant credit.

5. THE SERVICE

- a) VAE Group shall carry out with due skill and care the Service for each item of the equipment at the maintenance intervals as specified in the maintenance service schedule, generally in accordance with manufacturers' recommendations and good engineering practice.
- b) This service is paid for by the Customer through the Price and includes only those parts and materials (including all consumable materials) as specified in this agreement necessary to undertake the Service.
- c) The Service does not include the cost of any repair labour and/or repair/replacement of parts, materials and equipment.
- d) VAE Group shall comply with all relevant legislation, regulations and the Customer site regulations as in force at the commencement of the agreement. Any changes to legislation, regulations or the Customer's site regulations may result in additional works with the associated additional costs passed through to the Client.
- e) VAE Group warrants that it shall effect and maintain public liability insurance for not less than \$10 million and workers compensation insurance to the extent of its liability under the relevant Workers Compensation Act.

6. EMERGENCY RESPONSE SERVICE

- a) VAE GROUP shall make available its maintenance engineers to respond to emergency calls from the Customer on a 24 hours a day and 7 days a week basis.
- b) On receipt of any call from the Customer requesting attendance at the Customer's site, the VAE Group shall ensure that one of its maintenance technicians is available to attend the site.
- c) The Customer agrees to pay the VAE Group for the actual attendance at the site by the VAE Group's maintenance technicians and any subsequent work performed by them or materials, parts and/or equipment used by them.



7. INSTRUCTIONS/SPECIFICATIONS

- a) The Customer acknowledges that, where identified on the Offer, the Services are to be supplied to the Customer's specifications or relevant Australian Standards. Accordingly, the Customer shall, as soon as an Order has been placed, forthwith provide VAE Group with sufficient details and instructions to enable VAE Group to commence work. Any additional costs or expenses incurred by VAE Group as a result of the Customer's delay in this regard may be added to the Price by VAE Group.
- b) Where specifications, drawings or other particulars are supplied by the Customer, VAE Group's offer is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Customer on which VAE Group has based an Offer, then VAE Group is entitled to revise the Price in accordance with the additional work required to complete the Services.

8. SERVICES SOLD

All Services to be supplied by VAE Group to the Customer are as described on the Offer and the description on such Offer, prevails over all other descriptions including any specification or enquiry of the Customer.

9. CONTINUITY

This contract contemplates that the whole of the work required to complete the Services, or each major section thereof, shall be capable of being completed and delivered by VAE Group in one continuous operation. Any additional expense incurred by VAE Group as a result of VAE Group being unable to complete or deliver the whole of the Services or each major section of the Services in one part or delivery may be added to the Price by VAE Group.

10. PART ACCEPTANCE

The Offer is intended for acceptance in its entirety only, notwithstanding that certain parts thereof may have been individually itemised. Should a portion only of the Offer be accepted, that portion may be subject to a revision in Price at the election of VAE Group.

11. PAYMENT TERMS

- a) Any Customer who has been granted (in writing) a trade account or credit by VAE Group shall make payment in full of any invoice within 30 days from the end of the month in which:
 - (i) the invoice is dated, or;
 - (ii) the Customer is notified by VAE Group that the Services are complete; whichever is the earlier.
- b) Any part of the Price which is not paid by the Customer on the due date shall bear interest at the rate of 8% per annum (which may be waived by VAE Group in its discretion).
- c) VAE Group shall not have any liability to the Customer whatsoever arising from the cessation of work for failure to pay any invoice.

12. PRICES

Unless otherwise stated the Price stated by VAE Group in the Offer is exclusive of Goods and Services Tax (GST).

13. PAYMENT IN FULL REQUIRED

The Price and all amounts payable to VAE Group shall be paid in full and without deduction on the part of the Customer by way of set-off or counter-claim without the written authority of VAE Group.

14. OVERDUE ACCOUNTS

The Customer agrees to pay all legal costs, stamp duty (where applicable) and other expenses incurred by VAE Group in connection with the recovery of any amounts which are more than 30 days overdue by the Customer.

15. WORKING HOURS

This Offer is made in contemplation that VAE Group shall execute its work during normal working hours from 7am to 5pm in a five (5) day week. VAE Group may, at its sole discretion, elect to accept or decline any Offer which may (as a result of the Offer or VAE Group's other commitments) require it to work outside of normal working hours. Any additional costs resulting from the Customer's direction to work extraneous hours in lieu of the normal working hours in order to supply the Services may be added to the Price by VAE Group.

16. SUB-CONTRACTING

VAE Group shall be at liberty to sub-contract to third parties such parts of the work required to complete the Service as it may, in its absolute discretion think fit, without reference to the Customer.

17. RELEASE & INDEMNITY

Save as provided in these terms and conditions, the Customer hereby releases VAE Group from all liability and indemnifies VAE Group in respect of any claim, action or suit for loss or damage (including consequential loss or damage) by reason of delay, faulty or defective materials or workmanship or any act of negligence or omission by VAE Group its servants or agents.

18. LIMITATION OF LIABILITY

VAE Group's liability for a breach of this contract, including for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the Australian Consumer Law, is limited to:

- a) In the case of services:
 - (i) the supplying of the services again; or



- (ii) the payment of the cost of having the services supplied again, at VAE Group's sole discretion.
 - b) VAE Group's liability under section 274 of the Australian Consumer Law is expressly limited to a liability to pay to the Customer an amount equal to:
 - (i) the cost of replacing the Services; or
 - (ii) the cost of obtaining equivalent Services; whichever is the lesser amount.
- 19. GENERAL EXCLUSION OF LIABILITY**
- a) The Company is not liable for any prospective profits, or special indirect or consequential damages, or any general loss or damage, or for any expense resulting from use by the Applicant or others of defective goods.
 - b) The company's liability is limited to the amount identified in the preceding paragraph. Prior authority for the return of goods is required by the Company. The Customer must contact the Company either by telephone or email for this approval.
- 20. WARRANTIES**
- a) These Terms outline how the Company warrants our Services for all goods and services purchased after 1 January 2011.
 - b) Australian Consumer Law (ACL) protects consumers by giving them certain rights relating to the purchase of goods and services.
 - c) If you are a 'consumer' as the term is defined in the ACL:
 - (i) Our goods come within guarantees that cannot be excluded under the ACL;
 - (ii) You are entitled to a replacement or refund for major failure and for compensation for other reasonably foreseeable loss or damage;
 - (iii) You are 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.
- 21. SERVICE SCHEDULES**
- a) Any Service Schedules provided by VAE Group to the Customer are estimates only and are not of the essence.
 - b) VAE Group is not liable for any loss to the Customer (or other parties) resulting from late delivery or non-delivery.
 - c) VAE Group may at its option deliver the Services to the Customer in any number of instalments unless otherwise agreed in writing with the Customer.
 - d) If VAE Group delivers any of the Services by instalments, and any one of those instalments is defective for any reason:
 - (i) it is not a repudiation of the contract;
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- 22. CUSTOMER'S INSOLVENCY**
- If the Customer commits (or if VAE Group considers, on reasonable grounds, that the Customer is at risk of committing) an act of bankruptcy, enters into a scheme of arrangement or composition with creditors, suffers a sequestration order or, being a company, takes or has taken against it any action or proceedings which may result in the winding up of the company or is placed under official management or receivership, then VAE Group may:
- a) terminate the contract on the giving of 24 hours notice to the Customer in accordance with clause 25;
- 23. CREDIT LIMIT**
- If VAE Group grants any credit facility or nominates any credit limit, that is an indication only of its intention at the time. VAE Group can vary or withdraw any credit facility at its unfettered discretion, without liability to the Customer or any other party.
- 24. CANCELLATION**
- No Order may be cancelled except with consent in writing and on terms, which will indemnify VAE Group against all losses resulting from such cancellation.
- 25. TERMINATION**
- a) If the Customer shall default in any of its obligations under this contract, VAE Group shall have the right to terminate this contract immediately upon the provision of written notice to the Customer.
 - b) To the extent permitted by law, upon termination of the contract prior to payment of the Price in full all amounts due under the contract become payable forthwith.
- 26. NO WAIVER**
- No relaxation by VAE Group of the Customers obligations under this contract shall be regarded as a waiver of VAE Group's right to enforce those obligations on a subsequent occasion.
- 27. APPLICABLE LAW**
- This contract shall be construed according to the laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.
- 28. SEVERABILITY**
- To the extent possible, any part of these terms and conditions may be severed without affecting any other part.
- 29. PRIVACY POLICY**
- VAE Group will handle any personal information the Customer provides to it, in accordance with its privacy policy. VAE Group's privacy policy details can be obtained from the Credit Manager, VAE Group Ltd at 29 Sudbury Street, Darra.

