

## TERMS AND CONDITIONS FOR THE SALE OF EQUIPMENT AND SUPPLY OF INSTALLATION AND COMMISSIONING SERVICES

These terms and conditions (**Terms**) apply to the sale, and where specified, the installation and commissioning, of items and Equipment (**Services**), by Trescal Australia Pty Ltd (ABN 39 117 603 835) of Unit 14, 153 - 155 Rooks Road, Vermont, VIC, 3133 (**Trescal**) for the benefit of the Party identified in the Quotation (**Customer**).

### 1 Terms and Quotation

- 1.1 The Customer may at any time accept a Quotation by:
  - (a) signing the Quotation and notifying Trescal in writing; or
  - (b) by issuing a written purchase order to Trescal referencing and expressly accepting the Quotation.
- 1.2 The minimum value of a Quotation will be One Hundred Dollars (\$100.00) unless otherwise agreed in writing.
- 1.3 Upon the Customer's acceptance of the Quotation, the Customer will be deemed to have accepted these Terms without restriction or reservation, and a binding contract between Trescal and the Customer will be formed (**Agreement**).
- 1.4 Where the Customer orders Specialised Equipment, Trescal's obligations under an Agreement will not become effective until Trescal receives payment of a deposit for the Specialised Equipment from the Customer.
- 1.5 The Customer may request changes to the Agreement in writing, subject to approval by Trescal at its sole discretion.
- 1.6 Acceptance of a Quotation will be deemed to be a representation by the Customer that it is, and will remain in the future, solvent and able to pay all of its debts as and when they fall due.
- 1.7 To the extent permitted by law, all Materials and Specifications are only intended to be a general description of the Equipment and will not form part of the Agreement unless otherwise agreed in writing by Trescal.
- 1.8 Subject to clause 1.10, any Quotation accepted by the Customer in accordance with clause 1.1, may only be cancelled by the Customer if Trescal agrees to such cancellation in writing, in its sole discretion.
- 1.9 Where Trescal agrees to cancel a Quotation in accordance with clause 1.8, the Customer must pay Trescal all reasonable amounts incurred by Trescal as a result of such cancellation, within seven (7) days of Trescal agreeing to the cancellation in writing and invoicing the Customer for such amount.
- 1.10 Despite clause 1.8 and to the extent permitted by law, a Quotation for Specialised Equipment cannot be cancelled.
- 1.11 Trescal agrees to supply the Equipment in accordance with these Terms and the relevant Quotation. Where the provisions of these Terms and a Quotation conflict, the terms of the Quotation shall prevail over these Terms.
- 1.12 Where under the Agreement, in addition to Equipment, Trescal supplies to the Customer any software, the provision and use of such software will

be governed by the terms of a separate software licence which must be entered into between the relevant Software Licensor and the Customer. To the extent that there is any conflict between these Terms and such software licence, the terms of such software licence will prevail.

### 2 Entire Agreement

Subject to clause 1.4, the Agreement constitutes the entire agreement between the Parties and supersedes all other documentation (including any terms and conditions issued by Trescal or the Customer on any previous or subsequent Quotation or any other documentation of the Customer) which relate to the provision of Equipment set out in the Quotation.

### 3 Suitability of Equipment

- 3.1 These Terms and a Quotation or Agreement between Trescal and the Customer will not be deemed to be a sale by sample.
- 3.2 Any description of the Equipment is given by way of identification only and does not constitute a sale by description.
- 3.3 The Customer agrees that Trescal and any person purporting to act on Trescal's behalf, has not made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the goods for any particular purpose or any other matter.
- 3.4 The Customer:
  - (a) acknowledges that selecting Equipment requires Customer to use its own skill and judgement as to whether the Equipment meets Customer's requirements;
  - (b) warrants that it has such skill and judgement, and undertakes to exercise it at all times, in selecting Equipment;
  - (c) agrees it will be responsible for ensuring that the Equipment selected is fit or suitable for the Customer's purpose; and
  - (d) agrees that Trescal, to the extent permitted by law, will not be responsible for any selection made by Customer and will not have any liability to Customer for any Loss suffered by the Customer as a result of its selection of Equipment.

### 4 Documentation and Permits

- 4.1 Unless stated in a Quotation or otherwise agreed in writing between the Parties, the Customer will be responsible for:
  - (a) preparation and lodgement of all relevant Documentation; and
  - (b) procurement of all required Permits.
- 4.2 Where Trescal prepares, lodges or procures any Documentation or Permits, Trescal may invoice the

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|          | Customer for all reasonable costs incurred by Trescal.   |          | (c) terminate the Agreement with the Customer in respect of the Equipment;  |
| 4.3      | Trescal will not be liable for, except to the extent to which Trescal contributed to, any withdrawal, non-renewal or delay in relation to the lodgement of Documentation or the grant of Permits (or any resulting loss to the Customer) which prevents or delays receipt of the Equipment by the Customer at the Site.  |          | (d) recover from the Customer all costs in connection with storage, insurance and transportation of the Equipment; and  |
|          |  |          | (e) re-sell the Equipment at the price obtainable in the market and charge the Customer for any shortfall below the Purchase Price.   |
| <b>5</b> | <b>Packaging, delivery and storage</b>   | 5.10     | If the Agreement includes Services and the Equipment is delivered to the Customer prior to work commencing, the Customer must provide adequate, secure storage space for the Equipment at its own risk.   |
| 5.1      | The Equipment will be packed in accordance with Trescal's standard practice and procedures, and the cost of packing is included in the Purchase Price. If the Customer requests in writing that other packing procedures are followed and Trescal agrees, the Customer will bear any additional costs incurred by Trescal to complete the packing in accordance with the Customer's request.   | <b>6</b> | <b>Inspection and Defective Equipment</b>   |
| 5.2      | Unless otherwise agreed in writing, all Equipment will be delivered Ex Works.  | 6.1      | Upon receipt of the Equipment by the Customer, the Customer must inspect the Equipment and note any Defects and/or short supply of the Equipment. The Customer must notify Trescal in writing of such Defective Equipment and/or short supply of the Equipment within fourteen (14) days after receipt of the Equipment. In that case, the Parties will discuss the situation and endeavour in good faith to resolve it. Notwithstanding the foregoing, the Customer must pay for all Equipment delivered to it without set-off. Any required adjustments will be made after resolution of the dispute. |
| 5.3      | Trescal will use all reasonable efforts to deliver the Equipment by the Date for Delivery. However, the Customer acknowledges that the Date for Delivery is an estimate only and Trescal is not liable to the Customer for any delay in delivery of the Equipment.   | 6.2      | Where the Customer has properly notified and evidenced the Defective Equipment and/or short supply, and it is acknowledged by Trescal, Trescal may issue a credit note in favour of the Customer for the amount of the Defective Equipment and/or short supply of the Equipment.  |
| 5.4      | Subject to clauses 5.5 and 5.6, Equipment will be delivered to the Site (or such other location agreed in writing by the Parties) in accordance with the delivery requirements set out in the Quotation.   | 6.3      | Fourteen (14) days after receipt of the Equipment, the Customer will be deemed to have accepted the Equipment and has no further right to claim any delivered Equipment is Defective or short supplied.   |
| 5.5      | The Customer is liable for all costs and charges, including transport, shipping and handling charges, in connection with the delivery of the Equipment to the Site.  | 6.4      | This clause 6 is subject to clause 7 and the Customer's rights and Trescal's obligations at law (including under the ACL).  |
| 5.6      | The Customer must provide reasonable means of access to and from the Site and any necessary equipment and labour to facilitate the efficient delivery and unloading of Equipment.  | <b>7</b> | <b>Equipment Warranty</b>   |
| 5.7      | Trescal may in its sole discretion deliver the Equipment by instalments and the Customer is not entitled to: <ul style="list-style-type: none"> <li>(a) terminate the Agreement; or</li> <li>(b) claim for any Loss for the failure of Trescal to deliver any instalments on or before the Date for Delivery.</li> </ul>   | 7.1      | Trescal warrants that any Equipment supplied by Trescal, when properly installed, maintained and operated in accordance the directions notified by Trescal in writing to the Customer, will be free from Defects for the period offered by the third-party manufacturer ( <b>Equipment Warranty</b> ).  |
| 5.8      | Any Equipment that cannot be delivered due to a breach of the Agreement by the Customer will be stored and handled by Trescal at the Customer's risk. The Customer must pay or reimburse Trescal all reasonable amounts incurred in connection with storage, insurance or handling of that Equipment, within seven (7) days of an invoice being issued by Trescal.   | 7.2      | Trescal's liability under the Equipment Warranty will be limited to: <ul style="list-style-type: none"> <li>(a) the repair or replacement of the Equipment; or</li> <li>(b) the cost of having the Equipment repaired or replaced.</li> </ul>   |
| 5.9      | Any Equipment that cannot be delivered, due to a breach of the Agreement by the Customer, within three (3) calendar months of the Date for Delivery for the Equipment then Trescal, to the extent permitted by law, may: <ul style="list-style-type: none"> <li>(a) retain any deposit paid by the Customer;</li> <li>(b) where the Equipment is Specialised Equipment, invoice the Customer for the Purchase Price (in addition to any other costs), which the Customer must pay in accordance with clause 10 &amp; clause 11;</li> </ul> | 7.3      | No claim in respect of the Equipment Warranty may be made by the Customer unless the Customer: <ul style="list-style-type: none"> <li>(a) provides Trescal with written notice the facts or matters which form part of any such claim within seven (7) days of the Customer becoming aware of the Defect; and</li> <li>(b) allows Trescal a reasonable opportunity to inspect and test such Equipment claimed to be Defective.</li> </ul>   |

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| 7.4      | The Equipment Warranty does not apply to second hand Equipment.   |     |  | and omissions of subcontractors and subcontractors' employees as if they were the acts and omissions of Trescal; and          |
| 7.5      | The benefit of the Equipment Warranty is conferred solely on the Customer and may only be assigned to a third-party with the prior written consent of Trescal.  |     |  | (b) replace one third-party service provider for another provided that there are no material adverse effects on the Services. |
| 7.6      | The Equipment Warranty will not apply and is expressly excluded where the Defect is due to or caused by:  | 8.3 | The Customer will, at its own expense and in accordance with an Agreement or any other written directions from Trescal, prepare the Site to enable Trescal to supply the Services, including by:   |   |
|          | (a) the misapplication, abuse or improper installation of Equipment (except where Equipment is installed by Trescal);   |     | (a) procuring all necessary labour, lifting gear, supporting steelwork, electricity and other facilities required to supply the Services;  |   |
|          | (b) abnormal or extreme temperatures outside the operating range of the Equipment identified in any relevant Specifications;  |     | (b) providing all fixed runs of electrical wiring connecting equipment to mains power;   |   |
|          | (c) abnormal power source or power disturbance;   |     | (c) repairing or reconditioning of any existing machinery, plant or equipment that may be used in conjunction with the Equipment;  |   |
|          | (d) abnormal conditions including the presence of dirt, water or corrosive materials;   |     | (d) obtaining all necessary permits and licences required for the supply of the Services; and  |   |
|          | (e) the use or operation of Equipment above the rated capacity of Equipment or in any other improper or unsuitable manner;  |     | (e) providing Trescal's personnel with relevant Site induction and safety training.  |   |
|          | (f) tampering with, or unauthorised modification of Equipment;  | 8.4 | Customer agrees to provide Trescal's personnel (and subcontractors, if applicable) with full and safe access to the Site where necessary for the performance of the Services and Trescal's obligations under an Agreement, and to otherwise ensure that the Site is safe and complies with local laws and regulations. |   |
|          | (g) unauthorised use of Equipment in conjunction or interfaced with other equipment or software not supplied by Trescal;  | 8.5 | Trescal will ensure that its personnel (and subcontractors, if applicable):  |   |
|          | (h) damage during transportation of Equipment; and  |     | (a) access the Site only at the times agreed between the Parties;  |   |
|          | (i) the Customer's failure to ensure proper storage, operation and maintenance of Equipment, or any other negligence caused by Customer.  |     | (b) participate in and comply with any induction processes in relation to work performed on the Site; and  |   |
| 7.7      | This clause is subject to the Customer's agreement to pay the reasonable costs and expenses, including for accommodation, living and travel, of Trescal's technician where the Equipment is located outside a 100 km radius from the GPO of any capital city of an Australian state or territory.   |     | (c) when accessing the Site:   |   |
|          |   |     | (i) comply with all policies and procedures specified by Customer, including those relating to discrimination, harassment and workplace behaviour; and   |   |
| <b>8</b> | <b>Supply of Services</b>   |     | (ii) comply with WHS Laws.   |   |
| 8.1      | Where included in an Agreement, Trescal must perform the Services in accordance with:   | 8.6 | In addition to clause 8.3, Customer must prior to commencement, and for the duration, of the Services:   |   |
|          | (a) that Agreement;   |     | (a) provide Trescal with all assistance and cooperation as requested by Trescal for any Services and respond in a timely manner to Trescal' queries, and avoid unreasonable delays in making decisions;  |   |
|          | (b) any quality standards agreed in writing by the parties;   |     | (b) ensure that materials supplied to Trescal are complete, accurate and in a format agreed by the Parties (if any); and   |   |
|          | (c) all applicable laws;  |     | (c) appoint and maintain sufficient numbers of appropriately qualified personnel to liaise with Trescal in relation to the performance of the Services.  |   |
|          | (d) any of Customer's policies or procedures that Customer notifies to Trescal and which Trescal agrees to; and   | 8.7 | If any delay or failure by Trescal to supply the Services is caused or contributed to by any failure of Customer (including Customer's officers, employees or contractors) to comply with Customer's obligations   |   |
|          | (e) reasonable written directions or instructions given by Customer.  |     |  |   |
| 8.2      | Trescal may:  |     |  |   |
|          | (a) subcontract any of the Services to a third party service provider. Other than where the Customer requests the Services to be subcontracted to the original equipment manufacturer or otherwise agrees to have the Services provided on a pass through basis, Trescal remains responsible for the performance of obligations under an Agreement, notwithstanding any subcontracting, and is responsible for the acts |     |  |   |

under this clause 8 or the Agreement, then Trescal will not be responsible for Trescal's delay or failure and may be entitled to increase the price for the Services to reflect any increased costs to Trescal.

- 8.8 In supplying the Services, Trescal accepts no responsibility for the condition of any existing machinery, plant or equipment that may be used in conjunction with any Equipment, and any effect, including damage, that such machinery, plant or equipment may have on the Equipment.

## 9 Deposit

The Customer agrees to pay Trescal any deposit required by Trescal under an Agreement.

## 10 Purchase Price

- 10.1 The Customer acknowledges that the Purchase Price in a Quotation will be valid only for the Period of Validity stated in the Quotation.
- 10.2 If the Customer accepts the Quotation after the Period of Validity has expired, Trescal may change the Purchase Price in its sole discretion.
- 10.3 Where the Purchase Price in a Quotation is changed in accordance with clause 10.2:
- (a) Trescal will provide the Customer with an updated Purchase Price within 3 Business Days of the Customer accepting the Quotation;
  - (b) if the Customer does not provide a written objection within 10 Business Days of receiving the updated Purchase Price from Trescal, the Customer will be deemed to have accepted the updated Purchase Price;
  - (c) if the Customer provides Trescal with a written objection under clause 10.3(b), the Customer's acceptance of the Quotation will be deemed to be rescinded.
- 10.4 Where the Customer accepts a Quotation, the Customer must, in accordance with the Payment Terms, pay Trescal:
- (a) if applicable, any deposit required by Trescal; and
  - (b) the Purchase Price.
- 10.5 The Purchase Price in a Quotation is based upon the quantities referred to in the Quotation and Trescal reserves the right to amend the Purchase Price if the quantity is varied by the Customer. Prices are for delivery Ex Works.
- 10.6 The Purchase Price will be quoted and payable in Australian dollars and excludes GST and any other applicable taxes, duties or statutory levies or payments, which the Customer is liable to pay to Trescal in addition to the Purchase Price.

## 11 GST

- 11.1 Terms used in this clause 11 have the same meaning given to them in the GST Act.
- 11.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with these Terms or an Agreement are exclusive of GST.
- 11.3 If GST is imposed on any supply made under or in accordance with these Terms or an Agreement, the recipient of the taxable supply must pay to the

supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

- 11.4 If these Terms or an Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another Party, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of the amount of the Reimbursable Expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense and any GST payable by the other Party.

- 11.5 If GST is payable in relation to a foreign currency amount then the GST will be converted by the Customer into and payable by Trescal in Australian dollars in accordance with the Australian Taxation Office Ruling on foreign exchange conversions. The Customer will set out the conversion day and rate used for the conversion in its invoice.

## 12 Payment Terms

- 12.1 Unless specified in a Quotation or otherwise agreed in writing by the Parties, payment for Equipment and Services must be made within (30) thirty days of the date of an invoice being issued by Trescal to the Customer.
- 12.2 Any additional payments due by the Customer pursuant to any provision of an Agreement must be paid at the time provided in the Agreement or, if no time is provided, within 7 days of payment being demanded in writing by Trescal.
- 12.3 Trescal may, in its sole discretion:
- (a) require payment in part or in full in advance of order for any Equipment or supply of any Services for the first transaction with any customer;
  - (b) suspend or delay delivery of Equipment or supply of Services if payment is not received in accordance with this clause 12;
  - (c) require payment in part or in full in advance of order for Equipment having:
    - (i) a Purchase Price of \$20,000 or more; or
    - (ii) a delivery or supply schedule exceeding three (3) calendar months; or
    - (iii) any requirement by the chosen supplier for Trescal to pre-pay to procure such equipment.
  - (d) require payment in part or in full in advance of order and / or progressive payments for Equipment having a Purchase Price of \$100,000 or more; and
  - (e) require establishment of an irrevocable letter of credit in favour of Trescal for any proportion, up to and including the entire amount, of the Purchase Price and any other amounts payable to Trescal under an Agreement, at least one calendar month prior to the Date for Delivery.

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| 12.4      | If Equipment is to be dispatched by instalment, the Customer must pay to Trescal all amounts owing or on account of each instalment dispatched as invoiced by Trescal in accordance with this clause 12.  |           |  |
| 12.5      | The Customer is not entitled to withhold payment or to make any deductions from the Purchase Price, or any other amounts owing to Trescal, without the prior written consent of Trescal.  |           |  |
| <b>13</b> | <b>Disputed invoices</b>  |           |  |
| 13.1      | If the Customer disputes any invoice or part thereof, the Customer must:  |           |  |
|           | (a) notify Trescal in writing of its reasons; and   |           | (a) store the Equipment in a separate section of its premises in such a way as to indicate that the Equipment is not the property of the Customer but remains the property of Trescal;   |
|           | (b) pay the undisputed portion of the invoice.  |           | (b) not remove any markings, tags or labels from the Equipment that may indicate that the Equipment is, and remains, the property of Trescal. To the extent that the Equipment may be used in connection with any business conducted by the Customer, the Customer must advise any potential client or other third party in writing that the Equipment is the property of Trescal; |
| 13.2      | The Parties must meet, in person or virtually, to resolve the dispute within 14 days of the Customer's notification to Trescal in accordance with clause 13.1(a).   |           | (c) not allow any other client or third party to have or acquire any Security Interest in the Equipment for the purposes of the PPS Act; and   |
| 13.3      | Where the dispute is unable to be resolved under clause 13.2 the process in clause 20 will apply.   |           | (d) insure the Equipment for their full insurable or replacement value (whichever is higher) with a reputable insurer.   |
| 13.4      | Upon resolution of a disputed invoice or part thereof, under this clause 13 or clause 20, any amount that is determined as payable to Trescal must be paid immediately to Trescal, together with any interest accrued on such amount in accordance with clause 14.                                    | 16.3      | In addition to any lien to which Trescal may be entitled (by statute or otherwise), if the Customer:   |
|           |   |           | (a) fails to pay the Purchase Price by or on the due date; or  |
|           |   |           | (b) suffers, or in the reasonable opinion of Trescal, is likely to suffer, an Insolvency Event,  |
| <b>14</b> | <b>Interest</b>   |           | Trescal will be entitled to, without notice and without liability, take possession of the Equipment.   |
| 14.1      | Interest may be charged by Trescal, at its election, on overdue amounts at a rate of interest per annum equal to 1% in excess of the interest rate charged by the Trescal (Australia) Pty Ltd preferred bank on unsecured business overdraft for sums up to \$50,000.                                 | 16.4      | If Trescal is entitled to possession of any Equipment under clause 16.3 and the Customer fails to deliver the Equipment to Trescal if and when requested by Trescal to do so, the Customer must pay the reasonable costs of Trescal retaking possession of the Equipment.  |
| 14.2      | Interest will accrue on a daily basis, from the date on which the invoice becomes overdue until payment is made by the Customer.  | 16.5      | If any Equipment is not at the Customer's premises at the time Trescal is to retake possession under clause 16.3; the Customer must arrange for Trescal to collect the Equipment wherever it is situated. For this purpose the Customer permits Trescal to enter its premises and undertakes to procure any necessary authority to enter any other premises.                       |
| <b>15</b> | <b>Set off</b>  |           |  |
| 15.1      | Trescal may, in its sole discretion, set off any amount which the Customer, or any of its related entities, owe to Trescal under these Terms or Agreement against any amount which Trescal owes to the Customer or any of its related entities (whether under these Terms or Agreement or otherwise). | 16.6      | If any of the Equipment to which Trescal is entitled to repossess under clause 16.3, has been:   |
| 15.2      | Trescal may apportion payments made by the Customer to outstanding accounts in such amounts and in such order as Trescal may determine in its sole discretion.  |           | (a) sold or utilised by the Customer;  |
|           |   |           | (b) mixed with or built into any other products; or  |
|           |   |           | (c) disposed of or stored in such a manner as to render the Equipment unrecoverable or unidentifiable,   |
| <b>16</b> | <b>Risk and Title</b>   |           | the purchase price for the Equipment, together with any interest payable under this Agreement, may be recovered by Trescal from the Customer as a liquidated debt.   |
| 16.1      | Title in the Equipment will be retained by Trescal until it receives payment of the Purchase Price in full. Title will pass to the Customer:  |           |  |
|           | (a) upon clearance of funds for the amount of the Purchase Price in an account nominated by Trescal or  | 16.7      | Risk in the Equipment shall pass to the Customer immediately upon delivery of the Equipment.   |
|           | (b) in the case of payment by cheque, when the cheque has been honoured upon presentation by Trescal.   | <b>17</b> | <b>Liability</b>   |
| 16.2      | Until the Purchase Price for the Equipment is received in full by Trescal, the Customer must:   | 17.1      | To the maximum extent permitted by law, Trescal's liability in respect of Defective Equipment is limited at Trescal's sole discretion, to:   |
|           |   |           | (a) the replacement or repair of the Equipment;  |
|           |   |           | (b) the supply of equivalent Equipment; or   |

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|           | (c) the cost of replacing or repairing the Equipment or of acquiring equivalent Equipment.  | 18.6  | The Customer must do all things and provide all information which Trescal reasonably requires or considers reasonably necessary for the purposes of:  |
| 17.2      | Subject to clause 17.1, and to the maximum extent permitted by law, the maximum cumulative liability of each Party under these Terms, whether under the law of contract, tort or otherwise, will be limited to the Purchase Price of the Equipment.   |       | (a) ensuring any Security Interest is registered, enforceable, perfected or otherwise effective or has the intended priority;   |
| 17.3      | Notwithstanding any other clause in these Terms, clause 17.2 will not apply to liability for:   |       | (b) enabling Trescal to apply for any registration, complete any financing statement or give any notification, in connection with any Security Interest; or   |
|           | (a) personal injury or death;   |       | (c) enabling Trescal to exercise rights, including enforcement rights, in connection with the Security Interest,  |
|           | (b) damage to real or personal property;  |       | including, at the request of Trescal:   |
|           | (c) the Customer's breach of clause 22;   |       | (d) obtaining and giving any consents;  |
|           | (d) acts of fraud, wilful misconduct or wilful or fraudulent misrepresentation; or  |       | (e) producing and providing any receipts or information (including ACNs, ABNs and serial numbers) in respect of the Equipment;  |
|           | (e) any amounts due and payable by the Customer to Trescal under these Terms.   |       | (f) signing or procuring the signing of any documents;  |
| 17.4      | To the maximum extent permitted by law, neither Party will be liable for any Consequential Loss, and this exclusion of liability will apply whether the liability or claim is based on breach of contract, repudiation, tort (including negligence), under statute, in equity or otherwise.   |       | (g) facilitating the registration of any Security Interest on the PPS register;   |
| 17.5      | Trescal will not be under any duty to accept Equipment returned by the Customer and will do so only on terms to be agreed in writing in each individual case, including any applicable restocking fee which Trescal is entitled to charge.  |       | (h) facilitating the giving of notice to any person, including any person who also has, or appears to have, a security interest over the Customer or the Equipment; or  |
|           |   |       | (i) facilitating the exercise of Trescal's right in enforcing any Security Interest.  |
| <b>18</b> | <b>PPS Act</b>  | 18.7  | Without limiting any other provision of these Terms, the Customer is in default under these Terms for the purposes of section 123(1) of the PPS Act if any other secured party:   |
| 18.1      | The Customer acknowledges that:   |       | (a) seizes the Equipment (whether under PPS Act, section 123 or otherwise) for the purposes of enforcement; or  |
|           | (a) title in the Equipment does not pass to the Customer until the Price for the Equipment has been paid in accordance with clause 10.1; and  |       | (b) becomes entitled to seize the Equipment.  |
|           | (b) if, notwithstanding clause 18.1(a), the Customer sells or otherwise disposes of the Equipment before the purchase price for the Equipment has been paid in accordance with clause 10.1, it does so as Trescal's fiduciary agent and the proceeds of such sale or other disposal are also the property of Trescal and are held by the Customer on trust for Trescal. | 18.8  | For the purposes of section 157(3) of the PPS Act, the Customer irrevocably and unconditionally waives its right to receive any notice from Trescal (unless the obligation to provide the notice under the PPS Act is required by the PPS Act and cannot be excluded) in connection with the registration of a financing statement or a financing change statement in respect of the Equipment. |
| 18.2      | The Customer acknowledges and agrees that Trescal will have a Security Interest (being a purchase money security interest) in any Equipment supplied to the Customer under these Terms or any Agreement.  | 18.9  | Trescal is not required to provide the Customer with any notice under the PPS Act (including a notice of verification statement or any notice required upon enforcement of Trescal's Security Interest) unless the obligation to provide the notice under the PPS Act is required by the PPS Act and cannot be excluded.  |
| 18.3      | The parties acknowledge that, except as otherwise agreed in writing by the parties, any payments made by the Customer to Trescal must be applied in accordance with section 14(6)(c) of the PPS Act.  | 18.10 | The Customer must not allow a Security Interest to be created or registered over the Equipment in priority to the Security Interest held by Trescal.  |
| 18.4      | The Customer acknowledges that Trescal's rights and interest in proceeds derived from the Equipment constitute a Security Interest in such proceeds.  | 18.11 | The Customer must do all things requested by Trescal under clause 18.6 within the timeframes requested by Trescal.  |
| 18.5      | Trescal may register any Security Interest contemplated by, or arising under, these Terms or any Agreement on the PPS register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Equipment, with such expiry dates as Trescal determines in its absolute discretion).                              | 18.12 | The Customer agrees that any action taken by Trescal in relation to the Customer's Security Interest in the Equipment (including in relation to its registration, perfection or enforcement) is at the cost of the Customer.  |

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| 18.13     | Without limiting any duty of confidentiality arising from these Terms, an Agreement or otherwise, neither Party may, without the consent of the other Party, disclose any information in relation to these Terms, an Agreement or any Security Interest or of the kind referred to in section 275(1) of the PPS Act, other than the existence of a Security Interest in any Equipment or details of the relevant Equipment, except to the extent required by law or any government body. The Customer agrees not to disclose or authorise the disclosure of any information in relation to any Security Interest or of the kind referred to in section 275(1) of the PPS Act except with the prior written consent of Trescal. | conducted in accordance with the Australian Disputes Centre ( <b>ADC</b> ) Mediation Guidelines and with a mediator as agreed by the Parties or, failing agreement, as appointed by the CEO of the ADC. |
| 18.14     | The Customer warrants that the Equipment is inventory of the Customer.   |   |
| 18.15     | The Customer warrants that the Equipment is not, and will not become, a fixture for the purposes of the PPS Act, and agrees to take such steps as Trescal reasonably requires to prevent the Equipment becoming a fixture for the purposes of the PPS Act. Trescal will be entitled to remove the Equipment from any premises owned or occupied by the Customer (whether or not the Equipment is affixed) at the end of the term or following a default by the Customer under this document, and the Customer agrees:  |   |
|           | (a) to procure appropriate acknowledgements from any owner, landlord or mortgagee of the premises, in a form reasonably required by Trescal, to ensure that Trescal's interest in the Equipment, its rights to remove the Equipment from the premises, and its right to enter the premises for that purpose, are acknowledged; and   |   |
|           | (b) to detach, or procure the detachment of, the Equipment from the premises at the end of the term or following a default by the Customer under this document.  |   |
| 18.16     | Until the Customer has paid Trescal the full purchase price in respect of any Equipment, the Customer must ensure that the Equipment does not become an accession to other goods and is not processed or co-mingled with other goods.  |   |
| <b>19</b> | <b>Force Majeure</b>   |   |
|           | A Party will not be in default or breach of these Terms or an Agreement, or will not otherwise be liable to the other Party, for any delay or failure to perform arising from a Force Majeure Event.   |   |
| <b>20</b> | <b>Dispute resolution</b>  |   |
| 20.1      | Neither Party will commence court proceedings or action against the other Party under or in connection with an Agreement (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute using the following process:  |   |
|           | (a) following notice from either Party invoking the process, the parties must meet within seven (7) days or such other time as agreed to discuss and attempt to resolve the dispute; and   |   |
|           | (b) failing resolution of the dispute within twenty (20) days after the first meeting between the Parties in accordance with clause 20.1(a), the Parties must refer the matter to mediation to occur in Melbourne, Victoria and be   |   |
| <b>21</b> | <b>Default and Termination</b>   |   |
| 21.1      | Upon written notice to the Customer, if the Customer commits a breach or default of any of these Terms, Quotation or Agreement with Trescal, and the breach is incapable of remedy or, if the breach is capable of remedy, the Customer fails to remedy the breach within ten (10) days after receiving notice requiring it to do so, Trescal may, without prejudice to its other rights:  |   |
|           | (a) retain all amounts paid by the Customer;   |   |
|           | (b) cease further deliveries of Equipment;   |   |
|           | (c) seek to recover from the Customer all direct loss and costs incurred;  |   |
|           | (d) take possession of any Equipment not fully paid for; and   |   |
|           | (e) otherwise suspend its obligations under or terminate these Terms and any Agreement.  |   |
| 21.2      | Either Party may, to the extent permitted by law, terminate these Terms immediately:   |   |
|           | (a) upon written notice to the other Party if the other Party commits a material breach of these Terms or an Agreement and the breach is incapable of remedy or, if the breach is capable of remedy, the other Party fails to remedy the breach within thirty (30) days after receiving notice requiring it to do so; and  |   |
|           | (b) if an Insolvency Event occurs in relation to the other Party.  |   |
| 21.3      | Termination or expiry of these Terms will not affect any accrued rights or liabilities of either Party.  |   |
| 21.4      | Any obligations which are expressed to or, by their nature, survive expiry or termination of these Terms or an Agreement, will survive expiry or termination of these Terms or an Agreement and are enforceable at any time at law or in equity.   |   |
| <b>22</b> | <b>Confidential Information</b>  |   |
| 22.1      | The Parties must keep all Confidential Information confidential and must not disclose any Confidential Information without the prior written consent of the Party which initially disclosed that information.  |   |
| 22.2      | The Parties acknowledge that:  |   |
|           | (a) damages may not be an adequate remedy for any breach of clause 22.1; and   |   |
|           | (b) without prejudice to any other rights or remedies that the Parties may be entitled to as a matter of law, both Parties will be entitled to seek an injunction, specific performance, and other equitable relief to enforce the provisions of this clause 22.   |   |
| <b>23</b> | <b>IP Rights</b>   |   |
| 23.1      | Nothing in these Terms or an Agreement affects the ownership of any rights (including IP Rights) in any Existing Materials.  |   |
| 23.2      | If Trescal and the Customer agree that Trescal will use any of the Customer's Existing Materials, the  |   |

|           |   |           |  |
|-----------|---|-----------|--|
|           | Customer must grant to Trescal an irrevocable, royalty-free, worldwide, non-exclusive licence, to use the Customer's Existing Materials to the extent required to perform its obligations under these Terms or an Agreement.  | 27.2      | A communication is taken to be received: <ul style="list-style-type: none"> <li>(a) if delivered by hand, on that day; or</li> <li>(b) if sent by email, when confirmation of delivery is received by the sender which records the time that the email was delivered to the addressee's last notified email address unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee.</li> </ul> |
| 23.3      | The Customer acknowledges that all rights (including IP Rights) in any Materials created by Trescal in the course of providing the Equipment to the Customer under these Terms or an Agreement will be owned by Trescal, or its nominee despite any contribution by the Customer.   |           |  |
| 23.4      | The Customer must, upon request by Trescal, sign all documents and do all things as may be necessary to give full effect to this clause 23.   |           |  |
| <b>24</b> | <b>Publicity</b>  | <b>28</b> | <b>Waiver</b>  |
| 24.1      | Neither Party may, without the prior written consent of the other Party, make use of or refer to: <ul style="list-style-type: none"> <li>(a) the other Party's name;</li> <li>(b) the name of any of the other Party's personnel, customers or agents;</li> <li>(c) any information obtained under the Agreement for publicity purposes; or</li> <li>(d) the other Party or the Agreement in any advertisement or public announcement or notice except to the extent required by law or any competent regulatory body.</li> </ul> | 28.1      | Failure by a Party to insist on strict performance of any term, warranty or provision of the Agreement will not be construed as a waiver, or partial waiver, of: <ul style="list-style-type: none"> <li>(a) these Terms, a Quotation or of any rights a Party may have; or</li> <li>(b) any subsequent breach of any term, warranty or condition of these Terms or an Agreement.</li> </ul>  |
| <b>25</b> | <b>Compliance with Privacy Laws</b>   | <b>29</b> | <b>Variation</b>   |
|           | The Parties must comply with Privacy Laws to the extent that the laws apply.  |           | These Terms may only be varied, supplemented or replaced by a document executed by the Parties, including by an authorised representative of Trescal.  |
| <b>26</b> | <b>Anti-corruption practices</b>  | <b>30</b> | <b>Severability</b>  |
| 26.1      | The Customer undertakes to comply with any legal and regulatory provisions relating to the fight against corruption and influence peddling, which are applicable to the Customer in connection with its rights and obligations under these Terms or an Agreement.   |           | If a provision of these Terms would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these Terms.   |
| 26.2      | In complying with the undertaking in clause 26.1, the Customer must, at a minimum: <ul style="list-style-type: none"> <li>(a) adopt appropriate and effective anti-bribery measures and business practices;</li> <li>(b) conduct its business in a way that does not favour or place any of Trescal's personnel in a situation where a conflict of interest with Trescal may arise, and inform Trescal, if such a situation arises.</li> </ul>  |           |  |
| 26.3      | Trescal may, acting reasonably, monitor and request evidence of the Customer's compliance with this clause 26, and, if necessary, require corrective measures to be undertaken by the Customer to ensure its ongoing compliance.  | <b>31</b> | <b>Excluded terms</b>  |
| 26.4      | The Customer acknowledges that any breach of its obligations under this clause 26, will be a material breach of these Terms or an Agreement and be dealt with in accordance with clause 21.2.   | 31.1      | To the maximum extent permitted by law, all terms, conditions, warranties and representations expressed or implied by statute, common law, equity, trade, custom or usage are expressly excluded.  |
| <b>27</b> | <b>Notice</b>   | 31.2      | The Customer and Trescal agree that the United Nations Convention on Agreements for the International Sale of Equipment (the Vienna Convention) shall not apply to any Agreement.  |
| 27.1      | Any notice or other communication under these Terms or an Agreement must be given in writing and may be delivered by hand or sent by email to the authorised representative of the other Party, as identified in a Quotation.   | <b>32</b> | <b>No limitation of rights and obligations under consumer law</b>  |
|           |   |           | Nothing in an Agreement limits the Customer's rights or Trescal's obligations under the ACL.   |
|           |   | <b>33</b> | <b>Governing law and jurisdiction</b>  |
|           |   | 33.1      | The Agreement is governed and construed in accordance with by the laws of Victoria, Australia.   |
|           |   | 33.2      | Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia, and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.  |
|           |   | <b>34</b> | <b>Interpretation</b>  |
|           |   | 34.1      | The following terms as used in these Terms and a Quotation are defined as follows:   |
|           |   |           | <b>ACL</b> means Schedule 2 (Australian Consumer Law) of the <i>Competition and Consumer Act 2010</i> (Cth).   |
|           |   |           | <b>Agreement</b> means the contract formed in accordance with clause 1.2 between Trescal and the Customer that incorporates the Terms and the Quotation.   |



**Confidential Information** means any information that is disclosed by or on behalf of Trescal to the Customer that is by its nature confidential, is designated by Trescal as confidential or that the Customer knows or ought reasonably to know is confidential, but does not include any information that is in the public domain (other than through a breach of confidence). Confidential Information includes the Purchase Price and Quotation details.

**Consequential Loss** means loss of profit, loss of revenue, loss of goodwill or reputation and any other loss, not arising naturally from the relevant breach, whether or not that loss may be reasonably considered as having been in the contemplation of both Parties, at the time they made the Agreement, as the probable cause of the relevant breach.

**Customer** means anyone identified in a Quotation who purchases or orders Equipment from Trescal.

**Date(s) for Delivery** means the estimated date or dates for delivery of the Equipment as set out in a Quotation or otherwise notified to the Customer by Trescal.

**Defect or Defective** means a material failure of Equipment to comply with applicable Specifications.

**Documentation** means documentation, including declarations, required or associated with the import or export of Equipment.

**Equipment** means the goods, material, items and equipment, including Specialised Equipment, listed on the Quotation.

**Equipment Warranty** means the warranty described in clause 7.1.

**Ex Works** means Ex Works as defined in the Incoterms.

**Existing Materials** means all Materials owned by or licensed to a Party, which is in existence prior to these Terms becoming effective in accordance with clause 1.2 or which is developed independently of these Terms or an Agreement and which is made available by one Party to the other for the purposes of these Terms or an Agreement.

**Force Majeure Event** means an event:

- (a) which is outside the reasonable control of the Party claiming that the event has occurred; and
- (b) the adverse effects of which could not have been prevented or mitigated against by that Party by reasonable diligence or reasonable precautionary measures,

and includes natural disasters, acts of terrorism, riots, revolutions, civil commotion or epidemic.

**GST** has the meaning given by the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** in respect of a Party means:

- (a) a step is taken to enter into any scheme of arrangement between that Party and its creditors;
- (b) a step is taken by a mortgagee to enter into possession or dispose of the whole or a substantial part of the assets of the business of that Party;
- (c) a step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator, and administrator or other like person to the whole or a substantial part of the assets of the business of that Party;
- (d) the Party ceases to trade or carry on business; or
- (e) the Party is unable to pay its debts as and when they become due or is presumed insolvent for the purposes

of any provision of the *Corporations Act 2001* (Cth) or similar legislation.

**IP Rights** means any rights normally covered by this term and includes existing and future copyright, rights in designs, patents, trademarks all rights in any applications or registrations of those rights whether registered or unregistered (and whether registrable or not) and existing anywhere in the world.

**Loss** means loss, damage, liability, cost, charge, expense, outgoing, fine or payment of any nature or kind.

**Materials** means any materials, data, information or other work product, including designs, drawings, descriptive matter, pictures, graphic representations, Specifications, photographs, manuals, in any format (including physical or electronic).

**Party** means each of Trescal and the Customer, and together the **Parties**.

**Payment Terms** means the terms for payment of the Purchase Price and any other amounts due to Trescal, as described in clause 12, or as otherwise agreed in writing by the Parties.

**Period of Validity** means the time period for which the Purchase Price in a Quotation is valid.

**Permit** means any permits required or associated with the import or export of Equipment.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**Privacy Laws** means all applicable privacy laws, including the *Privacy Act 1988* (Cth) and the European Regulation 2016/679 of the Parliament and of the Council of 27 April 2016 (GDPR).

**Purchase Price** means the purchase price of the Equipment as set out in a Quotation, subject to any variation in accordance with these Terms.

**Quotation** means a quotation provided by Trescal and accepted by the Customer, in accordance with clause 1.1, for the supply of Equipment.

**Security Interest** means a mortgage, caveat, charge, lien, pledge, security, interest, title retention arrangement, purchase money security interest, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favour of any person or any security arrangement which is deemed to be a security interest for the purposes of the PPS Act.

**Services** means installation, commissioning or training services provided by Trescal to the Customer in accordance with the terms of an Agreement.

**Site** means, as specified in the relevant Quotation:

- (a) in relation to Equipment, the location to which the Equipment must be physically delivered by Trescal; and
- (b) in relation to Services, the premises at which the Services must be performed by Trescal,

**Software Licensor** means the party, either Trescal or a third party, providing the licence to the Customer to acquire and use the software.

**Specialised Equipment** means equipment that is non-standard, customised, outsourced or specialised as identified in a Quotation.

**Specifications** means the technical and functional attributes of Equipment, including weights, dimensions, specifications and other information.

**Terms** means these terms and conditions of sale for the supply of Equipment by Trescal as set out in this document.

**WHS Laws** means all laws relating to work health and safety and all codes of practice pertaining to the Services.

34.2 Unless expressed to the contrary, in these Terms and a Quotation:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) "includes" means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Melbourne, Victoria;
  - (vii) "\$" or "dollars" is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced despite any change in the identity of the Parties; and
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
- (f) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (g) headings do not affect the interpretation of these Terms.