

[Applied Industrial Technologies Pty Ltd]
[Applied Industrial Technologies Limited]

SERVICES TERMS AND CONDITIONS

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BACKGROUND

- A [Applied Industrial Technologies Pty Ltd ACN 006 100 045] / [Applied Industrial Technologies Limited CN 1819] (**Applied**) provides services in respect of machinery and equipment to businesses.
- B The Customer has requested that Applied provide services in respect of its machinery and equipment and Applied has agreed to provide such services to the Customer on the terms and conditions set out in this Agreement and in the Scope of Works.
- C This Agreement, together with the terms provided in the Scope of Works, shall apply in full for all Services conducted in accordance with the Scope of Works unless otherwise expressly agreed in writing by Applied. No other provisions shall be applicable, regardless of whether they were explicitly rejected or not in any individual case.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Additional Services means any additional predictive maintenance and condition monitoring services (including but not limited to any additional inspection, installation, repair and any service work) listed in the Scope of Works between Applied and the Customer and on the terms and conditions set out in this Agreement.

Agreement means this agreement, including the recitals and any schedules or annexures to this Agreement.

Australian Consumer Law means the Australian Consumer Law (ACL) as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in the region in which the Services are performed.

Commencement Date means the date set out in the Scope of Works between Applied and the Customer.

Companies Act means the *Companies Act 1993* (NZ).

Confidential Information means, in relation to a party, any information of or relating to that party, its Related Entities or its Representatives that is by its nature confidential, is designated by that party to be confidential or which the other party knows or ought to know is confidential, including any:

- (a) information regarding the current or future business or affairs (including financial position, sales, internal management, structure, policies, methodology, strategies, business and marketing plans and advertising, marketing or promotional activities) of that party, its Related Entities or its Representatives;
- (b) information regarding clients or customers of that party, its Related Entities or its Representatives; and

- (c) technical or scientific information or trade secrets of that party, its Related Entities or its Representatives,

which is disclosed, made available, communicated or delivered to the other party in connection with this Agreement, but does not include information which is or becomes public knowledge other than through a breach of this Agreement.

Consequential Loss means indirect, special or consequential loss or damage, including but not limited to loss of loss or damage to reputation, loss of revenue, loss of production, loss of product, loss of contract or loss of profit howsoever arising (including in connection with product recalls) and whether in an action in contract, tort (including without limitation, negligence), in equity, product liability, under statute, or on any other basis.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means the person or entity set out in Item 1 of Schedule 1.

Emergency Assistance means any services other than Normal Services and Additional Services provided on an urgent basis by Applied to the Customer at the Customer's request.

Equipment means the machinery, tools, materials and other equipment that Applied monitors and maintains for the Customer as part of the Services.

Event of Insolvency means any one or more of the following:

- (a) the party stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) the party is insolvent (including as designated under the Corporations Act or the Companies Act);
- (c) a court is required to presume that the party is insolvent;
- (d) an administrator is appointed over all or any of the party's assets or undertaking or any step preliminary to the appointment of an administrator is taken (other than any step which is not proceeded with or otherwise actioned within a period of 30 days);
- (e) a controller or similar officer is appointed to all or any of the party's assets or undertaking; or
- (f) an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notices or steps) for the party's winding up or dissolution or for the party to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Fee means the fees payable by the Customer to Applied for the Services as set out in Item 5, Item 6 and Item 7 of Schedule 1.

Force Majeure means any act, event or cause beyond the reasonable control of any party to the Agreement including, but not limited to:

- (a) an act of God, peril of the sea, strike or industrial dispute, failure in electricity supply or gas supply, war, riot, rebellion, act or threat of terrorism, insurrection, civil strife, declaration of a state of emergency, martial law, earthquake, flood, fire or other

physical natural disaster, unavailability of raw materials or supplies, explosion, epidemic, pandemic, quarantine, radiation or radioactive contamination, breakdown of plant, machinery or equipment or shortage of labour, transportation, fuel, power or plant, machinery, equipment or material; or

- (b) an action or inaction of government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, including restraint, prohibition, intervention, direction or requirement by legislation, regulation or other legally enforceable order,

the consequences of which could not be avoided by the affected party's exercise of reasonable diligence and which makes performance of the Agreement impossible, not merely more onerous or uneconomic.

GST means the goods and services tax as provided for by the GST Law.

GST Act means (as applicable):

- (a) within Australia, the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (b) within New Zealand, the *Goods and Services Tax Act 1985* (NZ).

GST Law means the GST Act and any associated legislation including without limitation delegated legislation.

Normal Services means those services defined in the Scope of Works or as listed in Item 1 of Schedule 2 (or otherwise being normal predictive maintenance and condition monitoring services, including but not limited to any inspection, installation, repair and any service work listed in Item 1 of Schedule 2)).

Related Entities means (as applicable):

- (a) within Australia, the term 'related body corporate' as defined in the Corporations Act; and
- (b) within New Zealand, the term 'related company' as defined in the Companies Act.

Representatives in relation to a party, means any officer, employee, agent, or sub-contractor of that party.

Schedule 1 means Schedule 1 of this Agreement.

Scope of Works means the scope of works in relation to the Services as per Schedule 2 or as mutually agreed and accepted separately between Applied and the Customer.

Services means the Normal Services and any Additional Services and/or Emergency Assistance (as the case may be) provided by Applied to the Customer under this Agreement and the Scope of Works.

Sites means the Customer's sites set out in Item 3 of Schedule 1 at which Applied is to provide the Services.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 reference to a party includes its successors, executors, heirs and permitted assignees;
- 1.2.2 the word "person" includes a corporation;
- 1.2.3 words importing the singular number or plural number include the plural number and singular number respectively;
- 1.2.4 a word importing any gender includes all other genders;
- 1.2.5 where any act, matter or thing is required by this Agreement to be performed or carried out on a certain day and that day is not a Business Day, then such act, matter or thing must be carried out or performed on the next following Business Day;
- 1.2.6 headings are for convenience only and do not affect interpretation;
- 1.2.7 any reference to a statute or statutory provision is deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended;
- 1.2.8 all references to clauses, recitals and Schedules are to clauses, recitals and Schedules to this Agreement;
- 1.2.9 expressions cognate with expressions defined in clause 1.1 shall be construed accordingly; and
- 1.2.10 all references to money in this Agreement are deemed to be references to Australian currency.

2 PROVISION OF SERVICES

2.1 Provision of Normal Services

Applied is to provide the Normal Services to the Customer in the manner set out in Item 1 of Schedule 2 and at the times or within the intervals specified in the Scope of Works.

2.2 Provision of Additional Services

- 2.2.1 At the request of the Customer, Applied may provide some or all of the Additional Services as set out in Item 2 of Schedule 2 at the times or within the intervals agreed between the parties.
- 2.2.2 The Customer is to make a written request for any Additional Services to Applied specifying:
 - (a) which Additional Services are required;
 - (b) the Sites at which the Additional Services are to be provided; and
 - (c) the times or intervals at which the Additional Services are to be provided.
- 2.2.3 If Applied is able to provide the Additional Services requested by the Customer, it will advise the Customer in writing and those Additional Services will be provided by Applied in accordance with the terms of this Agreement.

2.3 **Provision of Emergency Assistance**

In the event of an emergency with any Equipment, the Customer may request that Applied provide Emergency Assistance as the parties consider appropriate in the circumstances.

2.4 **Working Hours**

Unless otherwise agreed in writing between the parties, the Services will be provided between the hours of 8.30am to 4.30pm on Business Days.

2.5 **Labour and subcontracting**

2.5.1 Applied will provide the Services either itself or through subcontractors or it may delegate any or all of the Services to a third party provided that the subcontractor or delegate satisfies the Customer's regulations for entry to the Sites.

2.5.2 The cost of all materials and parts required by Applied (or if applicable, its contractor) in providing the Services is payable by the Customer in addition to the Fees.

3 **CUSTOMER'S OBLIGATIONS**

3.1 **Obligations**

In consideration of the provision of the Services by Applied under this Agreement, the Customer hereby agrees to:

- 3.1.1 promptly provide all information, documents and safe access to relevant Customer employees and sites which Applied reasonably requires to enable Applied to provide the Services;
- 3.1.2 promptly bring to Applied's attention any information which may impact on the Services to be provided by Applied;
- 3.1.3 provide an adequate workspace and/or office space at the Sites as required by Applied to provide the Services;
- 3.1.4 notify Applied as soon as practicable upon becoming aware that any Equipment is not functioning satisfactorily or as required;
- 3.1.5 provide copies of all safety and other regulations applicable at the Sites to Applied in advance of any Services being provided at the Sites;
- 3.1.6 upon request by Applied, supply copies of all technical documentation in respect of the Equipment, including drawings, descriptions, specifications, schedules and instructions to Applied to enable it to properly provide the Services;
- 3.1.7 give at least one week notice to Applied if it has to postpone a scheduled visit by Applied to a Site to provide the Services;
- 3.1.8 when applicable, provide documentation relating to cost avoidance from services to enable performance to be evaluated;
- 3.1.9 where a successful cost avoidance project has been documented, a nominated representative of the Customer is required to sign to verify the cost savings and
- 3.1.10 act in good faith in relation to the Services to be provided under this Agreement.

4 APPLIED'S OBLIGATIONS

4.1 Obligations

Applied hereby agrees to:

- 4.1.1 provide the Services to the Customer in accordance with the terms of this Agreement and the Scope of Works and in a safe and lawful manner;
- 4.1.2 notify the Customer of any serious problems in respect of the Equipment identified during the provision of the Services before leaving the Sites;
- 4.1.3 submit a written report to the Customer in respect of the Services by the mutually agreed date as specified in the Scope of Works
- 4.1.4 where the parties have not set a schedule for the provision of the Services, give the Customer at least 5 (or any mutually agreed date as specified in Scope of Works) Business Days' notice of a proposed visit to a Site to provide the Services; and
- 4.1.5 maintain professional indemnity insurance with a reputable insurer for an amount not less than \$5 million in respect of any one claim made against it.

5 TIME FOR COMPLETION

A time quoted for completion shall be binding only if it is expressly stipulated as such in writing. Applied is entitled to an extension of any binding time for completion if:

- 5.1.1 any additional orders for Services have been made by the Customer and accepted by Applied in writing;
- 5.1.2 any extensions of the Scope of Works agreed in writing;
- 5.1.3 any cases of relief under clause 10;
- 5.1.4 the Customer is in default of any of its obligations and such event causes delay in Applied's performance of the Agreement; or
- 5.1.5 any problem that could not have been reasonably foreseen at the time of quoting for the Services.

6 VARIATIONS AND DELAYS

The following events will be charged according to Applied's scheduled rates for the work involved:

- 6.1.1 any variation required to the Scope of Works that is agreed to by Applied and the Customer;
- 6.1.2 any delays causing an extension of the quoted completion time, not caused by Applied that are under the control of the Customer, and
- 6.1.3 any unforeseen problems that could not have reasonably been anticipated when quoting the Services.

7 EMPLOYEES

7.1 Restraint of Trade

Each party (**First Party**) undertakes to the other party (**Second Party**) that it will not directly or indirectly:

- 7.1.1 canvass or solicit any employee to leave his/her employment with the Second Party to join the First Party; or
- 7.1.2 counsel procure or otherwise assist any person to do any of the acts referred to in this clause 7.1 during the period commencing on the Commencement Date and ending 6 months after the termination of this Agreement.

7.2 Applied Liability

The Customer agrees that if an employee of Applied terminates his/her employment with Applied and takes up employment with the Customer (in any circumstance, including where the employee applies for a publicly advertised position with the Customer), Applied will not be liable to the Customer for any loss or damage suffered by the Customer in the event that Applied is prevented from satisfying any of its obligation under the Agreement provided Applied's non-performance is reasonably connected to the termination of the Applied employee.

8 FEES AND PAYMENT

8.1 Fees

- 8.1.1 Subject to clause 8.1.2, the Customer must pay Applied the fees as described in Part 2 of Schedule 1 for:
 - (a) Normal Services (Item 5) (unless otherwise specified in the Scope of Works);
 - (b) Additional Services (Item 6); and
 - (c) Emergency Assistance (Item 7).
- 8.1.2 The Fees payable under clause 8.1.1 are subject to any increase in the Fees agreed between the parties following the annual review procedures set out in clause 9.

8.2 Postponement or Interruption Costs

If the Services are postponed otherwise than in accordance with clause 3.1.7 or interrupted as a result of:

- 8.2.1 an act or omission on the part of the Customer;
- 8.2.2 an act or omission that is not the fault of Applied; or
- 8.2.3 an event of force majeure;

the Customer is to reimburse Applied for any costs or expenses, in addition to any Fees payable under clause 8.1, that Applied may incur as a result of the postponement or interruption to the provision of the Services.

8.3 Invoice and payment terms and instructions

- 8.3.1 Applied is to invoice the Customer in respect of the Fees.
- 8.3.2 Applied is to be paid an agreed percentage of any agreed lump sum as a down payment before starting the Services. Where a lump sum price is not agreed, the Customer is to, unless otherwise agreed, pay Applied's invoices within 7 days after the date of the invoice.
- 8.3.3 The Customer is not entitled to withhold or set off against any payments due to Applied on the basis of claims against Applied.
- 8.3.4 Applied's preferred payment method are provided in Annexure 1 to this Agreement.
- 8.3.5 If the Customer fails to comply with any terms of payment or requirements to secure payment, then without prejudice to any other rights or remedies available to Applied, Applied reserves the right to:
- (a) withhold further deliveries or the provision of Services;
 - (b) terminate the Agreement with any unpaid amounts thereupon become immediately due; and/or
 - (c) charge interest on any amount overdue on a daily basis rate three (3) percentage points greater than the per annum percentage rate then prescribed by the *Penalty Interest Rate Act 1983* (Vic) until the date full payment is made or in the case of New Zealand customers, as prescribed by the *Interest on Money Claims Act 2016*.
- 8.3.6 All payments made by the Customer are to be applied by Applied first in reduction of any interest owing and then in reduction of the Fees.
- 8.3.7 All costs associated with the collection of overdue debts (including debt collection and legal costs on a full indemnity basis) are recoverable by Applied from the Customer.
- 8.3.8 If a dispute occurs between the parties, the Customer is still obligated to pay Applied's Fees by the due date in full without deduction.

9 REVIEW

9.1 7.1 Review Procedures

- 9.1.1 On or about each anniversary of the Commencement Date, the parties will review the operation of the Agreement and their respective obligations under the Agreement (**Review**).
- 9.1.2 As part of the Review, the parties may agree to vary any terms of this Agreement provided that such variations are set out in writing and signed by both parties.
- 9.1.3 As part of the Review, the parties are to review and agree upon all Fees payable for the Services that will apply until the next Review. In the event the parties cannot agree on the increase to the Fees, the Fees for the period immediately after the Review will be the lesser of the Fees proposed by Applied or the Fees for the period immediately preceding the Review, increased by a factor equivalent to:
- (a) in Australia, the Consumer Price Index value for Australia; and

- (b) in New Zealand, the Consumer Price Index value for New Zealand.

10 LIMITATION OF LIABILITY

10.1 Exclusion of Consequential Loss

Notwithstanding any other provision of this Agreement, Applied has no liability for any Consequential Loss.

10.2 Exclusions

10.2.1 To the extent permitted by law, Applied excludes all warranties, conditions, guarantees or terms, other than those expressly set out in this Agreement including, but not limited to, all warranties, conditions, guarantees or terms implied in fact or by law. Nothing in this clause has the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right, remedy or other benefit that is preserved, including:

- (a) in Australia, by the Australian Consumer Law (or any other legislative provision in Australia); or
- (b) in New Zealand, by the Contract and Commercial Law Act 2017 (or any other legislative provision in New Zealand).

10.2.2 Further, the parties acknowledge that, for Customers in New Zealand:

- (a) the Consumer Guarantees Act 1993 will apply if the Customer is a "Consumer" (being a person that acquires goods or services from Applied for personal domestic use or investment purposes); and
- (b) where the Customer is not a "Consumer":
 - (1) the parties agree that the Consumer Guarantees Act 1993 is excluded; and
 - (2) to the extent that the parties are in trade, the parties agree that they contract out of the Fair Trading Act 1986,

and clause 20.6 shall apply fully between them.

10.3 Liability limit

10.3.1 Applied's total liability to the Customer for loss or damage of any kind howsoever caused, in contract, tort (including negligence), under any statute or otherwise from or relating in any way to this Agreement or its subject matter is limited (to the extent permitted by law) to:

- (a) in the case of Normal Services, an amount not exceeding 10 per cent of the Fee payable by the Customer for the Normal Services for one year from the Commencement Date as set out in the Scope of Works, or
- (b) in the case of a one-off service event, the fee payable by the customer.

10.3.2 Without limiting the application of clause 10.3.1 under no circumstance is Applied liable to the Customer:

- (a) for any loss, damage, cost, claim, expense, penalty or other payment resulting from:
- (1) the shutdown or unavailability of any Equipment; or
 - (2) the interruption to the Customer's business as a result of the shutdown or unavailability of any Equipment.

11 FORCE MAJEURE

A failure to comply with any provision of this Agreement (except an obligation to pay money) will not:

- 11.1.1 give rise to a claim by any party against another; or
- 11.1.2 result in a breach of this Agreement,

if the failure or omission arises by reason of delay or inability to perform a party's obligations under this Agreement caused by Force Majeure, to the extent and for the period of non-performance contemplated by this clause.

12 INDEPENDENT CONTRACTOR

This Agreement does not deem or constitute any party a partner, agent or representative of any other party or create any trust or commercial partnership except in the circumstances provided for in this Agreement.

13 CONFIDENTIAL INFORMATION

Each party undertakes not to disclose any Confidential Information of the other party and may not permit unauthorised persons to have access to or make unauthorised use of the other party's Confidential Information, except:

- 13.1.1 as may be required by law;
- 13.1.2 with the prior consent of the other party; or
- 13.1.3 to Applied's or the Customer's employees, agents or advisers in the proper course of providing the Services.

14 INTELLECTUAL PROPERTY

- 14.1.1 Applied owns any intellectual property rights in any drawings, specifications, plans, inventions, designs or software (collectively "**works**") created by its personnel in providing the Services to the Customer.
- 14.1.2 Applied hereby grants the Customer a non-exclusive, non-transferable licence to use the works for the purpose for which they were intended. This licence terminates upon the expiry or termination of the Contract, unless Applied otherwise agrees in writing.

15 TERMINATION

15.1 Term

This Agreement continues in full force and effect unless and until terminated in accordance with clause 15.2.

15.2 Termination

This Agreement terminates:

- 15.2.1 immediately by agreement between the parties;
- 15.2.2 if either party gives 3 months written notice to the other party of its intention to terminate the Agreement;
- 15.2.3 if either party breaches any provision of this Agreement and fails to rectify that breach within 30 days after a notice of that breach from the party requesting that breach be remedied is given to the other party; or
- 15.2.4 immediately if an Event of Insolvency occurs in relation to either party.

15.3 Obligations on termination

On termination:

- 15.3.1 the Customer must immediately pay all outstanding Fees and any other costs, expenses and interest owing under this Agreement to Applied;
- 15.3.2 each party ceases to have any liability to the other party or parties under this Agreement, except for liabilities which have accrued up to the date of termination; and
- 15.3.3 any Confidential Information belonging to one party in the possession of the other party is to be returned to that party or destroyed, at the election of the party that owns the Confidential Information.

16 DISPUTES

16.1 Dispute Resolution

If a dispute arises between the parties, a party must not start arbitration or court proceedings (except proceedings seeking injunctive, declaratory or interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause 16.

16.2 Notification of Dispute

A party claiming that a Dispute has arisen must notify the other party, giving details of the Dispute.

16.3 Resolution of Dispute

During the 21 day period after a notice is given under clause 16.2 (or longer period agreed in writing by the parties to the Dispute) (**Initial Period**) each party to the Dispute (**Disputant**) must use its best efforts to resolve the Dispute.

16.4 Mediation

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the dispute must be referred for mediation, at the request of any Disputant, to:

- 16.4.1 a mediator agreed on by the Disputants; or

16.4.2 if the Disputants are unable to agree on a mediator within 7 days after the end of the Initial Period, a mediator nominated by the Resolution Institute of Victoria.

16.5 **Role of Mediator**

The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

16.6 **Confidentiality**

Any information or documents disclosed by a Disputant under this clause:

16.6.1 must be kept confidential; and

16.6.2 may not be used except to attempt to resolve the Dispute.

16.7 **Costs**

Each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally the costs of any mediator engaged.

16.8 **Termination of Dispute Resolution**

After the Initial Period, a Disputant that has complied with clauses 16.1, 16.2 and 16.3 may terminate the Dispute resolution process by giving notice to each other Disputant.

16.9 **Performance**

Unless prevented by the nature of the dispute, the Disputants will continue to perform this Agreement while attempts are made to resolve the dispute.

17 **GST**

17.1 **Construction**

In this clause 17:

17.1.1 words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

17.1.2 'Provider' means a service provider and includes Applied.

17.2 **Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

17.3 **Payment of GST**

If GST is payable by a Provider or by the representative member for a GST group of which the Provider is a member, on any supply made under this Agreement, the recipient will pay to the Provider an amount equal to the GST payable on the supply.

17.4 **Timing of GST payment**

The recipient will pay the amount referred to in clause 17.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

17.5 **Tax invoice**

The Provider must deliver a tax invoice or an adjustment note to the recipient before the Provider is entitled to payment of an amount under clause 17.3. The recipient can withhold payment of the amount until the Provider provides a tax invoice or an adjustment note, as appropriate.

17.6 **Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a Provider under this Agreement, the amount payable by the recipient under clause 17.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Provider or by the Provider to the recipient as the case requires.

17.7 **Reimbursements**

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

17.7.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

17.7.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

18 **REPRESENTATIONS AND WARRANTIES**

18.1 **Warranties**

Each party represents and warrants to the other that:

18.1.1 if a body corporate, it is a company duly registered and validly existing under the laws of the place of its incorporation;

18.1.2 it has the corporate power to enter into and perform its obligations under this Agreement;

18.1.3 it has taken all necessary corporate action to authorise the entry into and performance of this Agreement; and

18.1.4 this Agreement is valid and binding.

18.2 **Defects Liability**

18.2.1 Subject to clause 10 of this Agreement, Applied is to, at its own expense, make good, by repair or replace, any defects in the Services, or in the materials or parts used by Applied in the provision of the Services which appear within six months after the Services are performed (**Defects Warranty**).

18.2.2 Applied's Defects Warranty:

- (a) applies only to defects that appear under normal operating conditions and under proper use;
- (b) does not extend to inter alia defects arising from transportation; the Customer's faulty maintenance; faulty erection or faulty installation or storage; alterations in the Services carried out without Applied's prior consent in writing; repairs carried out improperly by the Customer, or any third party; or defects arising from normal wear and tear; and
- (c) does not apply on defects on, or defects arising from, materials or parts supplied by the Customer.
- 18.2.3 Remanufactured bearings are delivered to the Customer packaged to secure preservation and boxed with a tamper proof lock which may only be removed for bearing installation and not otherwise. Failure to observe this condition may render the Defects Warranty void.
- 18.2.4 If the Customer is an Australian customer and is deemed a 'consumer' within the meaning of the Australian Consumer Law, then the following guarantee is provided by Applied:
- (a) Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- to cancel your service contract with us; and
 - to a refund for the unused portion, or to compensation for its reduced value.
- (b) You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 18.2.5 All claims under the Defects Warranty (or the guarantee under clause 18.2.4, if relevant) must be made in writing to Applied at 22 Stamford Road, Oakleigh, Victoria 3166 Australia, within the warranty period specified in this clause 18.2. Upon Applied's request the Customer must submit the relevant information with the claim to Applied's head office within 15 working days of Applied's request. All expenses related to making a claim must be borne by the Customer.
- 18.2.6 With respect to:
- (a) Australian Customers, the Defects Warranty (and the guarantee under clause 18.2.4, if relevant) is given by the following entity whom Customers should contact:
- Applied Industrial Technologies Pty Ltd**
Address: 22, Stamford Road, Oakleigh, Victoria, Australia 3166
Phone: 03 9567 8700
Email: au-ops@appliedau.com
- (b) New Zealand Customers, the Defects Warranty (and any other implied warranties, including that are provided to Customers who are "Consumers"

under the Consumer Guarantees Act 1993) is given by the following entity whom Customers should contact:

Applied Industrial Technologies Limited
Address: 67 Lady Ruby Drive, East Tāmaki, Auckland 2013, New Zealand
Phone: 9274 0056
Email: nz-ops@appliednz.com

19 NOTICES

19.1 Giving notice

Any notice given under this Agreement (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this Agreement) must be in writing, signed and:

- 19.1.1 delivered by hand or courier;
- 19.1.2 sent by prepaid post; or
- 19.1.3 sent by email,

to the address specified in Item 1 of Schedule 1 (for the Customer) and Item 2 of Schedule 1 (for Applied) (as varied by any written notice given by the recipient to the sender from time to time).

19.2 Receipt of notice

19.2.1 A notice given in accordance with clause 19.1 is taken to be received by the recipient:

- (a) if delivered by hand or courier, on delivery;
- (b) if sent within Australia to an Australian address or within New Zealand to a New Zealand address (as applicable):
 - (1) by regular post, 6 Business Days after the date of posting;
 - (2) by express post, 2 Business Days after the date of posting;
 - (3) by priority post, 4 Business Days after the date of posting;
 - (4) by registered post, on proof of receipt by signature; or
- (c) if sent by email, at the time of receipt by the addressee.

19.2.2 In all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00am on the next Business Day.

19.3 Proof of receipt of notice by email

In proving that a notice given by email has been received by the recipient, it is sufficient to produce an acknowledgement or receipt that the email has reached the recipient's email address.

19.4 **Signing of notice**

A notice given under this Agreement is sufficiently signed if:

- 19.4.1 in the case of a body corporate, it is signed by a director, secretary or other officer of, or a legal practitioner acting for, the body corporate; or
- 19.4.2 in the case of an individual, it is signed by the individual.

19.5 **Other modes of service permitted**

The provisions of this clause are in addition to any other mode of service permitted by law in the relevant jurisdiction.

20 GENERAL

20.1 **Costs**

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

20.2 **Counterparts**

- 20.2.1 The parties consent to execution of this Agreement by electronic means, in paper format or a combination of both.
- 20.2.2 This Agreement:
 - (a) may be executed and exchanged in any number of counterparts, whether in electronic or paper format or a combination of both, and all the counterparts together constitute one and the same instrument; and
 - (b) is binding on the parties on the exchange of executed counterparts.
- 20.2.3 If the signatures on behalf of one party are on different counterparts, this will be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Agreement.

20.3 **Assignment**

A Customer must not, without the consent in writing of Applied, assign or part with or be relieved of any of its obligations, powers or rights hereunder or attempt to do any of the foregoing.

20.4 **Variation**

This Agreement may only be varied in writing executed by all of the parties.

20.5 **Waiver**

No waiver by any party of any default in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of the performance of any other provision, condition or requirement herein nor to be a waiver of or in any manner release any party from strict compliance with any provision, condition or requirement in the future nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter or of any other right.

20.6 **Entire understanding**

- 20.6.1 This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- 20.6.2 All previous negotiations, understandings, representations warranties memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.
- 20.6.3 No oral explanation or information provided by any party to another:
- (a) affects the meaning or interpretation of this Agreement; or
 - (b) constitutes any collateral document, warranty or understanding between any of the parties.

20.7 **Severability**

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

20.8 **Governing law**

This Agreement will be construed in accordance with the laws in force in the jurisdiction described in Item 4 of the Schedule 1 and the parties irrevocably submit to the jurisdiction of the courts of that jurisdiction described in Item 4 of the Schedule 1.

SCHEDULE 1 - PARTICULARS / FEES

PART 1 – PARTICULARS

Item	Description
Item 1 Customer (19.1)	<p>[Customer Name] ABN/ACN/CN [ABN/ACN/CN of Customer] of [Customer address] Contact: [insert name] / [insert email]</p>
Item 2 Applied (19.1)	<p>[Applied Industrial Technologies Pty Ltd] ACN 006 100 045 of 22 Stamford Rd, Oakleigh, Victoria, 3166, Australia Contact: [insert name] / [insert email]</p> <p>[Applied Industrial Technologies Limited] CN 1819 of 67 Lady Ruby Drive East Tāmaki, Auckland 2013, New Zealand Contact: [insert name] / [insert email]</p>
Item 3 Customer Site/s (1.1)	[insert]
Item 4 State (20.8)	[Victoria, Australia] / [New Zealand]

PART 2 – FEES

Item 5 Fees for Normal Services (1.1)	[insert]
Item 6 Fees for Additional Services (8.1)	[insert]
Item 7 Fees for Emergency Assistance (8.1)	[insert]

SCHEDULE 2 - SCOPE OF WORKS

Item 1 (see attached)

Scope of Work /
Normal Services
(1.1/2.1)

Item 2 (see attached)

Scope of Work /
Additional Services
(1.1/2.2)

EXECUTED as an agreement.

[NOTE: APPLIED TO SELECT APPROPRIATE JURISDICTION EXECUTION BLOCK – SEE BELOW.]

EXECUTED by **APPLIED INDUSTRIAL TECHNOLOGIES PTY LTD (ACN 006 100 045)** in accordance with section 126 of the *Corporations Act 2001* (Cth) by:

.....
Authorised individual signature

.....
Authorised individual name

EXECUTED by **APPLIED INDUSTRIAL TECHNOLOGIES LIMITED (CN 1819)** in accordance with section 180(1)(b) of the *Companies Act 1983* (NZ) by:

.....
Authorised individual signature

.....
Authorised individual name

NOTE: CUSTOMER TO SELECT APPROPRIATE EXECUTION BLOCK – SEE BELOW.

EXECUTED by **[CUSTOMER NAME]** (ACN **[INSERT ACN]**) in accordance with section 126 of the *Corporations Act 2001* (Cth) by:

.....
Authorised individual signature

.....
Authorised individual name

EXECUTED by **[CUSTOMER NAME]** (ACN **[INSERT ACN]**) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

.....
Director signature

.....
Director/company secretary signature

.....
Director name

.....
Director/company secretary name

EXECUTED by **[CUSTOMER NAME]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

.....
Sole director signature

.....
Sole director name

ANNEXURE 1

Our preferred Payment method in Australia

<p>Bank : HSBC Bank Australia Limited Account Name : Applied Industrial Technologies Pty Ltd Bank BSB : 343001 Account Number : 392760001 SWIFT : HKBAAU2S Note: - Please quote your account number; and - e-mail remittance advice to AU-Finance@Appliedau.com</p>	<p>Applied will also accept payment by credit card. A credit processing fees will be charged for the payment. In this case, please call your State's AR Controller</p>

Our preferred Payment in New Zealand

<p>Bank : ANZ Bank New Zealand Limited Account Name : Applied Industrial Technologies Limited Bank BSB : 010215 Account Number : 007337000 SWIFT : ANZBNZ22 Note: - Please quote your account number; and - e-mail remittance advice to NZ-Accounts@Appliednz.com</p>	<p>Applied will also accept payment by credit card. A credit processing fees will be charged for the payment. In this case, please call your State's AR Controller</p>