

## 1 GENERAL

- 1.1 The Contract Documents apply to the provision of the Services and the sale of Goods (as the case may be) by TR Calibration to the Customer.
- 1.2 The Contract Documents cannot be varied, modified or substituted without the prior written consent of TR Calibration.
- 1.3 The Contract Documents apply despite any other terms and conditions that are proffered by the Customer.
- 1.4 The Quotation will prevail over these Terms to the extent of any inconsistency.
- 1.5 The Customer agrees that TR Calibration may, at its discretion, subcontract the whole or any part of the Services provided by it.
- 1.6 The Customer agrees to be bound by these Terms from the time it requests a Quotation from TR Calibration for the Services or the purchase of the Goods or otherwise engages TR Calibration after the receipt of the Terms.

## 2 QUOTATIONS

- 2.1 Prior to providing the Services or the sale of the Goods, TR Calibration will provide the Customer with a Quotation.
- 2.2 The Quotation is:
- 2.2.1 valid for a period of ninety (90) days from its date or such other period (if any) stated in the Quotation;
- 2.2.2 an invitation only to the Customer to place an order for the Services or the Goods based on that Quotation;
- 2.2.3 subject to the Customer accepting the Contract Documents; and
- 2.2.4 subject to any variations provided for in clause 3.2.

2.3 TR Calibration is not required to commence work on any Equipment or supply any Goods to the Customer, until the Customer has accepted the Quotation and TR Calibration has received notice of the Customer's acceptance within the period specified in clause 2.2.1.

2.4 A Quotation for an Express/HyperCal Calibration Service will only be provided subject to availability. The Customer agrees not to send Equipment to TR Calibration for an Express/HyperCal Calibration Service unless a Quotation has been provided to them. To assist TR Calibration in determining the required Services, the Customer agrees to clearly label the outside of packaging when sending Equipment to TR Calibration.

## 3 PRICING & PAYMENT

### 3.1 Price

The price payable for the Services or the Goods is the price agreed by the parties in writing or the price stated in the Quotation and is subject to:

3.1.1 the Minimum Invoice Value;

3.1.2 any variation in accordance with clause 3.2;

3.1.3 if there is a variation in accordance with clause 3.2 and the Customer does not agree to the revised Quotation, the Customer agrees that it is responsible for paying an amount up to the value of the then current Quotation on the basis of the time spent by TR Calibration on performing the Services to date; and

3.1.4 if a Quotation for a Repair Service is rejected by the Customer, the Customer agrees that it is responsible for paying the Survey Fee quoted.

### 3.2 Variation

Any of the following events are deemed to be variations:

- 3.2.1 the Customer requests any changes, additions or variations to the Services or Goods as outlined in the Quotation or as agreed by the parties in writing;
- 3.2.2 there is a change, addition, variation of the Equipment or the Goods as outlined in the Quotation or as agreed by the parties in writing;
- 3.2.3 TR Calibration determines during a Calibration Service that the Equipment requires a Repair Service;
- 3.2.4 TR Calibration determines during a Repair Service that the Equipment requires an additional Repair Service or replacement that was not identified in the Quotation or agreed by the parties;
- 3.2.5 TR Calibration determines during a Calibration Service that the Equipment requires an adjustment required to bring the Equipment into specification other than a Minor Adjustment; or
- 3.2.6 the Equipment is, in the reasonable opinion of TR Calibration, unusually dirty and requires cleaning.
- 3.3 If there is a variation pursuant to clause 3.2, TR Calibration may:
- 3.3.1 reject the request for the variation;
- 3.3.2 increase the price to account for the variation; or
- 3.3.3 provide a revised Quotation for the Services or the supply of the Goods.
- ### 3.4 Payment
- 3.4.1 If credit is extended by TR Calibration to the Customer, then payment for the Services or the Goods must be made by the Customer to TR Calibration in accordance with the terms of the

Customer's credit account, and otherwise within 30 days.

3.4.2 If the Customer does not have a credit account, payment for the Services and the Goods must be made by the Customer prior to delivery or collection of the Equipment or the Goods.

This payment must include payment for any variations.

3.4.3 If any amount is due and unpaid, the Customer agrees to pay interest on the overdue amount at the rate of 2% higher than the Reserve Bank of Australia's 90 day bill rate calculated daily until payment in full is received for the Services or the Goods. The Customer is liable for all additional costs TR Calibration may incur, including legal, administrative and collection costs to recover unpaid amounts.

#### **4 GST**

4.1 All moneys payable by the Customer to TR Calibration under any of the Contract Documents are exclusive of GST, unless otherwise expressly agreed in writing.

4.2 In addition to any consideration payable by the Customer, the Customer must pay TR Calibration an amount equal to the GST imposed on each taxable supply under the Contract Documents, at the same time as the consideration is payable.

4.3 TR Calibration agrees to provide a tax invoice to the Customer.

#### **5 DELIVERY & INSURANCE**

5.1 The Equipment and the Goods are available for collection at the location specified in the Contract Documents or as agreed by the parties.

5.2 At the Customer's request, TR Calibration will arrange packing and delivery of the Equipment or the Goods to the Customer utilising the carrier nominated by the Customer on the Quotation. If a TR Calibration carrier is nominated, packaging and delivery charges will be invoiced to the Customer by TR Calibration.

5.3 If the Customer fails to take delivery in accordance with this clause the Customer agrees to pay TR Calibration for all storage and handling charges and other consequential loss or damage arising from that delay.

5.4 TR Calibration is not responsible to the Customer for any damage to or loss of the Equipment or the Goods whilst being delivered to or from the Customer or a third party subcontractor. It is the Customer's responsibility to arrange insurance for the Goods and Equipment.

5.5 If there is any defect in the Equipment or the Goods upon delivery TR Calibration must be notified by the Customer within 48 hours of delivery otherwise the Equipment or the Goods will be deemed to have been delivered in good order and condition and in full compliance of these Terms.

#### **6 LIABILITY**

6.1 To the maximum extent permitted by law, TR Calibration makes no warranties or representation and the Customer releases TR Calibration from all liability for any loss, claim, damage or injury suffered in connection with the supply of the Goods and provision of the Services.

6.2 TR Calibration's liability to the Customer in respect of any

non-excludable warranty or condition shall be limited to the maximum extent possible to either of the following (as TR Calibration may decide):

6.2.1 In relation to the Supply of Goods:

- a. the replacement of the Goods or the supply of equivalent Goods;
- b. the repair of the Goods;
- c. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- d. the payment of the cost of having the Goods repaired.

6.2.2 In relation to the provision of the Services:

- a. supplying the Services again; or
- b. payment of the cost of having the Services supplied again.

6.3 Unless otherwise stated in the Contract Documents, all express and implied warranties, guarantees and conditions under statute, general law or trade usage, as to merchantability, description, quality, suitability or fitness of the Equipment or the Goods for any purpose, or as to design, assembly, installation, materials, workmanship or otherwise are expressly excluded.

6.4 The Customer acknowledges that it has assessed the suitability of the Goods and/or the Equipment (after the Services have been completed) and is satisfied that they are suitable for its purposes and will use them at its own risk.

6.5 Subject to any non-excludable warranty or condition and to the maximum extent

permitted by law, TR Calibration's maximum aggregate liability for all claims relating to the Contract Documents or their subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the purchase price paid by the Customer under the Contract Documents.

6.6 TR Calibration is not liable to the Customer in any circumstance for indirect, economic or consequential loss suffered by the Customer

6.7 The Customer acknowledges and agrees that it has not relied upon any statement or representation by TR Calibration in respect of the purpose for which the Customer desires to use the Equipment or the Goods and that TR Calibration is not responsible or liable for any failure or unsuitability of the Equipment or the Goods to perform the purposes required by the Customer.

6.8 The Customer is entirely responsible for ensuring that its Equipment is calibrated and serviced at appropriate frequency regardless of any estimates provided by TR Calibration.

## 7 DEFAULT

7.1 If the Customer:

7.1.1 defaults in making any payment;

7.1.2 fails to comply with the Contract Documents;

7.1.3 repudiates any of the Contract Documents or any contract it has with TR Calibration;

7.1.4 dies;

7.1.5 stops payment;

7.1.6 calls a meeting of creditors, becomes insolvent or subject to the bankruptcy laws; or

7.1.7 being a company, enters into any scheme of arrangement with creditors, or receivers and managers or administrators are appointed or has any winding up petition presented against it, TR Calibration may at its sole discretion and option at any time prior to payment in full for the Services or the Goods:

7.1.8 suspend or cancel the Contract Documents;

7.1.9 require payment in cash before delivery of the Equipment or the Goods (irrespective of any terms of payment previously specified);

7.1.10 maintain, take over or repossess the Goods and dispose of the Goods without prejudice to any claim TR Calibration may have for damages for any loss resulting from any re sale or disposal of the Goods;

7.1.11 exercise all rights to the Goods as if it were the owner. This clause shall apply notwithstanding any waiver by TR Calibration of any default or failure by the Customer to comply with these Terms and without prejudice to its other rights under any of the Contract Documents.

7.2 If the Customer is in default of the Contract Documents, the Customer consents to TR Calibration its servants and agents entering the Customer's premises, or any other premises where the Goods are located, using such force as is necessary in order to repossess the Goods. The Customer must provide TR Calibration with all reasonable assistance in order to locate and

collect the Goods. If the Goods are not available for collection at the nominated time and or place the Customer will be liable for any additional costs TR Calibration incur. TR Calibration will not be liable for any damage to property caused by any person in collecting the Goods.

## 8 RETENTION OF TITLE

At all times the title in the Goods remains with TR Calibration (irrespective of delivery of the Goods to the Customer) until the Customer has paid the full invoiced price and any other payments due to TR Calibration in respect of the Goods arising out of the Contract Documents.

## 9 SECURITY INTEREST

9.1 Expressions used in this clause 9 and in the *Personal Property Securities Act 2009 (Cth)* ("PPSA") have the same meanings as when used in the PPSA.

9.2 If TR Calibration already has a prior registered security interest in the Goods supplied, that security interest continues in the Goods. The Customer acknowledges that the Contract Documents create a security interest in favour of TR Calibration for the purposes of the PPSA, and:

9.2.1 TR Calibration may register this security interest with the Registrar of Personal Property Securities pursuant to the PPSA in order to perfect its security interest;

9.2.2 the Customer agrees the security interest granted to TR Calibration pursuant to the Contract Documents may be a purchase money security interest for the purpose of the PPSA;

9.2.3 if requested, the Customer must pay or reimburse the costs

of registering the security interest, and provide TR Calibration with all assistance reasonably required in order for TR Calibration to register the security interest; and 9.2.4 for the purpose of section 115 of the PPSA, the following sections of the Act do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135.

9.3 The Customer authorises TR Calibration to search the Personal Property Securities Register at any time for any information about the Customer.

9.4 The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest granted under the Contract Documents in relation to commercial property.

#### **10 CUSTOMER COVENANTS**

In relation to the sale of Goods, the Customer agrees with TR Calibration that until it has paid the full invoice price and any other payments due to TR Calibration in respect of the Goods:

10.1 it has no right, title, estate or interest in the Goods;  
10.2 it will not remove any sticker or other identification from the Goods giving notice of TR Calibration ownership of the Goods;  
10.3 purport to grant any encumbrance over or in connection with the Goods or otherwise purport to offer or use the Goods as security. For the purpose of these Terms, encumbrance means any mortgage, lien, charge, bill of sale, option, title retention, pledge, claim, restriction,

condition, overriding interest, security interest pursuant to the PPSA or other encumbrance;  
10.4 it must not 'on-hire' or part with possession of the Goods unless it receives the prior written consent of TR Calibration. TR Calibration's consent may be withheld in its absolute discretion; and

10.5 it must collect as agent for TR Calibration the price payable for the Goods from any person who the Goods are sold or delivered.

#### **11 GENERAL**

11.1 These Terms are governed by and construed in accordance with the laws of Victoria

11.2 The parties agree that a construction of the Contract Documents that results in all provisions being enforceable is to be preferred to any other construction. If, despite the application of this clause, a provision of the Contract Documents are illegal or unenforceable:

11.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and

11.2.2 in any other case, the whole provision is omitted,

11.2.3 and the remainder of the Contract Documents continue in force.

11.3 A failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party under the Contract Documents does not operate as a waiver of the power or right. A single or partial exercise of any power or right does not preclude any other or future exercise of that, or any

other, power or right under the Contract Documents.

11.4 The Contract Documents constitute the whole agreement between the parties. No warranties, representations, guarantees or other terms or conditions of any nature not contained and recorded in the Contract Documents have any force or effect.

11.5 The Customer must not assign any of its rights under the Contract Documents. TR Calibration may assign the Contract Documents on 14 days notice to the Customer.

11.6 TR Calibration may vary these Terms at any time. If the Customer continues to engage TR Calibration or order Goods from TR Calibration, after that time, the Customer is deemed to have accepted the revised terms.

11.7 In the Contract Documents, unless the contrary intention appears:

11.7.1 the singular includes the plural and vice versa;

11.7.2 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;

11.7.3 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;

11.7.4 words importing one gender include other genders;

11.7.5 other grammatical forms of defined words or expressions have corresponding meanings;

11.7.6 a reference to a document or instrument, including the Contract Documents, includes a reference to that document or instrument as

novated, altered or replaced from time to time;

11.7.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:

a. two or more parties; or  
b. a party comprised of 2 or more persons,  
is made or given and binds those parties or persons jointly and severally;

11.7.8 if an act must be done on a specified day that is not a business day, the act must be done instead on the next business day;

11.7.9 if an act required to be done under the Contract Documents on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;

11.7.10 all monetary amounts are in Australian dollars; and

11.7.11 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of the Contract Documents.

## 12 DEFINITIONS

12.1 **“Calibration Services”** means verification of Equipment accuracy to the agreed specification by comparison with a reference standard and, if necessary, any Minor Adjustment required to bring the Equipment into specification;

12.2 **“Contract Documents”** means these Terms, the Quotation, the Credit Application and any other contract or agreement entered into between TR Calibration and the Customer which the parties agree is subject to these Terms;

12.3 **“Credit Application”** means the credit application entered into between TR Calibration and the customer;

12.4 **“Customer”** means the entity acquiring the Services or Goods from TR Calibration;

12.5 **“Equipment”** means the equipment on which the Services will be provided;

12.6 **“Express/HyperCal”** means a Calibration Service which is given priority over other Calibration Services;

12.7 **“Goods”** means the aviation and testing and measurement parts supplied by TR Calibration and other Goods;

12.8 **“GST”** has the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended or replaced from time to time;

12.9 **“Minor Adjustment”** means any adjustment (and re-verification of affected parameters) performed during a Calibration Service where the cost of the adjustment and re-verification is less than 10% of the price stated in the Quotation for the Calibration Service;

12.10 **“Minimum Invoice Value”** means the minimum price payable by the Customer to TR Calibration which is stated in the Quotation;

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

12.12 **“Quotation”** means any written quotation provided by TR Calibration to the Customer covering the proposed provision of the Services or the Goods;

12.13 **“Repair Services”** means the repair services to be provided by TR Calibration on the Customer’s Equipment;

12.14 **“Survey Fee”** means the survey fee payable by the Customer to TR Calibration which is stated in the Quotation;

12.15 **“Services”** means the Calibration Services and/or the Repair Services;

12.16 **“Terms”** means these terms and conditions for the provision of the Services and the Goods; and

12.17 **“TR Calibration”** means TR Pty Ltd (ACN 005 499 721).