

**P & T Industries Pty Ltd [ACN 145 722 238] Trading As Price Trandos Engineering–
 (“PTE”) Terms of Trade (Service)**

1. INCORPORATION OF TERMS

- 1.1. This Terms of Trade shall be incorporated into each and every contract of service (“**Service Contract**”) which is entered into between PTE and the Customer, by use of the words “PTE’s Terms of Trade are incorporated into this Service Contract a copy of which is available on request”.
- 1.2. The Customer’s submission of a Purchase Order or making a booking shall constitute acceptance of PTE’s Terms of Trade.
- 1.3. These Terms of Trade:
 - (a) are current from 1 March 2016;
 - (b) apply to all Service Contracts entered into between PTE and the Customer from 1 March 2016; and
 - (c) may be replaced by PTE at any time and, upon such replacement, the newer terms of trade shall prevail over these Terms of Trade.

2. FORMATION OF SERVICE CONTRACT

- 2.1. If the Customer wishes to engage PTE to service the Goods (“**Services**”), then the Customer must submit a request for quotation (“**Quote**”).
- 2.2. PTE shall inspect the Goods for the purpose of providing a Quote for the Services.
- 2.3. A Service Contract is formed between the Customer and PTE upon the terms contained in these Terms of Trade when:
 - (a) PTE issues a Quote; and
 - (b) the client:
 - (i) issues a purchase order; or
 - (ii) makes a booking for the service.
- 2.4. A Quote shall include the pricing and indicative time for the Services.
- 2.5. A callout fee may be charged to the Customer if the Customer does not issue a Purchase Order or make a booking.

3. BOOKINGS

- 3.1. Upon receipt of the Purchase Order PTE shall contact the Customer to arrange a mutually convenient time for the Services.
- 3.2. Bookings may be rescheduled at a mutually convenient time provided 72 hours’ prior notice is given to PTE.

4. PAYMENT OF SERVICE FEE

- 4.1. PTE will issue an invoice for the Service Fee and any parts replaced after the Services have been performed.
- 4.2. Payment of the invoice is required within 30 days after the issue of the invoice.
- 4.3. Unless otherwise directed by PTE, the Customer shall pay the invoice amount into the PTE Account by electronic funds transfer.
- 4.4. PTE may reject further services requested by the Customer where previous invoices remain outstanding.

5. CUSTOMER OBLIGATIONS PRIOR TO COMMENCING WORK

- 5.1. The Customer at its expense shall provide the following:
 - (a) Access to site;
 - (b) Temporary site power (unless advised otherwise by PTE);
 - (c) Access to the mains power switch for the site;
 - (d) Lighting;
 - (e) Power supply on site;
 - (f) Toilets and Amenities on site;
 - (g) Safe work environment;
 - (h) Electrical cabling access, conduits and cording; and
 - (i) Any other items considered necessary by PTE and advised to the Customer in writing prior to commencement of work.
- 5.2. PTE shall not commence work until PTE is satisfied the above items are provided.
- 5.3. If the site is not to specification, PTE must contact the Customer to advise the site is not to specification.
- 5.4. The Customer acknowledges that delays in providing the items in clause 5 will result in delays to the Services and indemnifies PTE for any loss arising due to delays to the Services.

6. COMMENCEMENT AND PERIOD FOR COMPLETION OF WORK

- 6.1. **Programme/Timetable**
 - (a) The timetable for completion of the work shall be as indicated in the Quote provided to

the Customer.

(b) The timeframes as contemplated in the Quote may be modified in accordance with this Terms of Trade.

6.2. Testing Of Goods

After the completion of the Services, PTE shall test the Goods in accordance with all applicable laws, enactments, orders, regulations, and other similar instruments (including all applicable health and safety legislation).

6.3. Certificate of Completion

(a) PTE will prepare a Certificate of Completion upon completion of the Services.

(b) Where PTE detects non-standard items that require repair PTE will provide the Customer with a Quote for the additional work which is considered to be a variation to the Service Contract.

(c) PTE will issue a Safety Certificate to the Customer within 28 days of the Services.

7. SUPPLY OF PARTS

7.1. Procurement of Parts

Where parts are replaced as part of the Services PTE shall procure the parts for the Goods from reputable manufacturers.

7.2. Installation of Parts

PTE shall install parts of the Goods with all due care and skill and where required the technicians are licenced.

7.3. Title & Risk

(a) Full unencumbered title in the Goods does not pass to the Customer until the Service Fee, and any other outstanding indebtedness whether in respect of the supply of the Services or Goods or otherwise, is paid in full.

(b) Risk in the Goods passes to the Customer on installation and acceptance of the Goods.

(c) PTE will not be liable for any loss incurred or suffered by the Customer as a result of any delay in delivery of parts to the Goods or the provision of Services.

8. WARRANTY CLAIMS

8.1. PTE shall only be liable for claims against the workmanship of servicing the Goods as stipulated in the Quote for a period of 12 months from the date of the Services.

8.2. Standard manufacturer's warranties apply to parts supplied.

8.3. PTE warrants that at the completion of the Services and testing of the Goods, the Goods as a whole were in good working order.

8.4. Unless otherwise stipulated in the Quote, the Customer acknowledges that PTE is not required to inspect or warrant that the other parts of the Goods not directly serviced or replaced by PTE are in good working order.

8.5. The Customer must make a valid warranty claim to PTE within the period of 12 months from servicing.

8.6. Upon receipt of a warranty claim from a Customer, PTE shall either:

(a) Accept the claim; or

(b) Reserve the right to send an inspector to the site to validate the claim in which case the claim will be accepted or rejected.

8.7. PTE will accept warranty claims for the repair or replacement of any Goods or part of the Goods which satisfy the following conditions:

(a) The defect arises as a result of any structural fault or defect in the materials used in the manufacture of that item;

(b) The alleged defect is not occasioned by the neglect or abuse of the Goods in question;

(c) The alleged defect does not include fading or aging of any material used in the Goods' construction.

8.8. If the claim is rejected in accordance with clause 8.6 above then the Customer may request that the parties jointly appoint an independent consultant to assess the Goods to determine if there is a defect in the workmanship for installation.

8.9. If the claim is accepted by PTE in accordance with 8.6 or a determination is made in favour of the Customer at clause 8.8 above then PTE shall repair the defects within a reasonable amount of time.

9. GENERAL WARRANTIES & REPRESENTATIONS

9.1. PTE knows of no reason why the Services may not be supplied in accordance with and to the levels stated in this Service Contract

and,

(a) the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

(b) it shall discharge its obligations pursuant to this Service Contract with all due skill, care and diligence including good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures.

9.2. Limitation Of Liability

(a) Except as expressly stated in this Service Contract, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the maximum extent permitted by applicable law.

(b) Any liability owing by PTE under the terms of this Service Contract for provision of Services and/or supply of parts is hereby limited to the cost of repair or replacement of the faulty item and does not include economic or consequential loss.

(c) Any liability by any sub-contractors contracted by PTE for the provision of Services, and/or supply of parts, is hereby limited to the cost of repair or replacement of the faulty item and does not include economic or consequential loss.

10. CUSTOMER REPRESENTATIONS & OBLIGATIONS

The Customer hereby warrants and represents to PTE that:

(a) it will co-operate with PTE (without incurring any expenditure) and provide the PTE with such information and assistance as PTE may reasonably require in order to enable or facilitate PTE to duly and punctually to comply with its obligations under these terms.

(b) In the event that PTE considers either that the Customer is in breach of any obligations or that PTE is otherwise unable to perform any obligations as a result of any other act or relevant omission of the Customer (in either case other than the due and proper performance by the Customer of

its obligations hereunder) PTE shall only be entitled to rely on such breach act or relevant omission as relieving it from the performance of any of its obligations.

(c) PTE shall reasonably promptly after the alleged breach, act or omission comes to its attention notify the Customer in writing setting out in reasonable detail such breach, act or omission; and the extent to which such breach, act or omission by the Customer precludes or restricts performance by PTE of its obligations.

11. TERMINATION FOR CUSTOMER'S BREACH

11.1. Without limiting the generality of any other clause in the Service Contract, PTE may terminate this Service Contract immediately by notice in writing if:

(a) any payment due from the Customer to PTE pursuant to this Service Contract remains unpaid for a period of 14 days; or

(b) the Customer breaches any clause of this Service Contract and such breach is not remedied within 7 days of written notice by PTE.

11.2. Notwithstanding the preceding clause PTE may terminate this Service Contract immediately on notice in writing to the Customer if:

(a) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;

(b) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;

(c) the Customer, being a natural person, dies; or

(d) the Customer ceases or threatens to cease conducting its business in the normal manner.

11.3. If notice is given to the Customer pursuant to the preceding clauses, PTE may, in addition to terminating the Service Contract:

(a) claim liquidated damages equivalent to the Service Contract Price;

(b) retake possession of all property of PTE in the possession of the Customer; and

(c) pursue any additional or alternative

remedies provided by law.

12. TERMINATION FOR PTE'S BREACH

12.1. If PTE breaches any of its obligations under this Service Contract, then the Customer may only terminate this Service Contract if:

- (a) the Customer has notified PTE of the alleged breach in writing; and
- (b) PTE has failed to remedy the default within 28 days of receiving the notice of default from the Customer.

12.2. If the Customer terminates this Service Contract in accordance with clause 12.1 above then:

- (a) the Customer shall pay any invoice issued under clause 4 for work carried out by PTE up to the date that the Service Contract is terminated;
- (b) PTE shall only be liable to the Customer:
 - (i) for the costs that the Customer incurs to rectify PTE's default; and
 - (ii) up to a maximum amount equal to the payments of the contract price paid to PTE.

12.3. The Customer acknowledges and agrees that PTE shall not be liable to the Customer for any economic loss suffered by the Customer including, but not limited to:

- (a) loss of profit, revenue or use; and
- (b) financial costs including interest incurred on borrowings, by reason of PTE's default.

12.4. Notwithstanding any rights that the Customer may have against PTE, the Customer shall not be entitled to withhold or set-off any amounts from any invoice from PTE and must pay the monies owing under any invoice to PTE in full without deduction.

13. MISCELLANEOUS

13.1. Quotes

Unless otherwise stated in the Quote:

- (a) all prices in the Quote are exclusive of GST and sales tax; and
- (b) all prices are quoted in Australian dollars.

13.2. GST

- (a) The parties acknowledge that the amounts set out in this Service Contract are exclusive of GST.

(b) The service and supply and installation of the parts for the Goods made by PTE to the Customer will be subject to GST which will be added to invoices rendered.

(c) The Customer must pay to PTE an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.

13.3. Use of Subcontractors

(a) The Customer acknowledges that if PTE engages the services of Sub-Contractors no additional consent, either verbal or written will be obtained from the Customer.

(b) The selection of Sub-Contractors will be at the discretion of PTE, who may, if so required terminate and replace any Sub-Contractor they in their absolute discretion see fit.

(c) PTE warrants to the Customer that any Sub Contractors engaged by PTE will be covered by all necessary insurance, and the Customer will not have the right to raise any further queries in relation to insurance cover of the Sub Contractors or request certificates of currency for those insurance policies.

14. GENERAL

14.1. Entire Agreement

This Service Contract shall constitute the whole agreement between the parties hereto in respect of the subject matter of this Service Contract provided that nothing in this clause 14 shall limit a Party's liability for fraudulent misrepresentation.

14.2. Variation

This Service Contract shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the Parties.

14.3. Severability

This Service Contract is severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Service Contract.

14.4. **Waiver**

Unless otherwise agreed in writing, no failure by either Party to exercise any right or remedy available to it hereunder nor any delay so to exercise any such right to remedy shall operate as a waiver of it nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

14.5. **Notices**

Any notice to be given hereunder by either Party to the other shall be in writing and delivered personally, sent by pre-paid recorded delivery or registered post to the addressee at the addressee's registered office for the time being, by telefax, or by email transmission and shall be deemed to be received if delivered personally at the time of receipt, if sent by post at the expiration of 72 hours after being placed in the post (having been correctly addressed) whether or not received, or if by telefax or email 24 hours after dispatch to the correct telex number, telefax number or email address of the addressee.

14.6. **Indemnities**

Where any indemnity ("**Indemnity**") is given by one Party ("**Indemnifying Party**") to the other ("**Other Party**") the following terms shall apply to any claim, demand or action to which the Indemnity applies (in this clause 14.6, "**Relevant Claim**"):

- (a) the Indemnifying Party shall indemnify the Other Party against its legal costs and disbursements in relation to the Relevant Claim on a solicitor/ client basis;
- (b) each Party shall promptly notify the other of any circumstances that could reasonably give rise to a Relevant Claim;
- (c) the Other Party shall not make any admission or compromise (save where required by court order or governmental regulations) which is prejudicial to the defence or settlement of any matter in respect of any to which the Indemnity applies without the consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed;

(d) the Other Party shall supply all reasonable assistance required by the Indemnifying Party for the purpose of contesting any Relevant Claim on receiving an indemnity from the Indemnifying Party in a form reasonably acceptable to it against its costs and expenses (including legal costs and disbursements on a solicitor/ client basis) incurred in doing so.

14.7. **Third Party Rights**

No third party shall have any rights in connection with this Service Contract.

14.8. **Force Majeure**

Neither Party shall be liable for any delay or failure to carry out its obligations under this Service Contract caused by Force Majeure provided that it promptly gives written notice of the occurrence of the Force Majeure relied on to the other party and it uses all reasonable endeavours to remove or avoid the effect of such Force Majeure as promptly as practicable. If any Force Majeure is relied on for longer than 60 days by either Party under this clause 14.8 the other shall be entitled to terminate this Service Contract on written notice.

14.9. **Governing Law and Jurisdiction**

This Service Contract shall be governed and construed in accordance with the laws of Western Australia. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Western Australia.

15. **PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

- (a) This Terms of Trade constitutes a security agreement;
- (b) PTE's interest in the Goods supplied or serviced by PTE, and supplied by the Customer to any of its customers or third parties, is a security interest;
- (c) The Customer consents to PTE registering its security interest on the Personal Property Security Register and agrees to provide all assistance reasonably required by PTE to facilitate registration;
- (d) The Customer agrees that this Terms of Trade and all related information and

documents are confidential (“**Confidential Information**”) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this Service Contract or required by law;

(e) Expressions defined in the PPSA have the same meaning when used in these Terms of Trade.

16. DEFINITIONS AND INTERPRETATION

16.1. The terms defined have the same meanings when used throughout this Service Contract.

16.2. Unless the contrary intention appears:

(a) a reference to this Service Contract or any other document includes any variation

(b) or replacement of it;

(c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(d) the singular includes the plural and vice versa;

(e) a reference to a person includes a reference to the person’s executors, administrators, successors, transferors, substitutes (including persons taking by novation) and assigns;

(f) an agreement, representations or warranty on the part of or in favour of two (2) or more persons binds or is for the benefit of them jointly and severally;

(g) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day;

(h) a reference to time shall mean Western Standard Time;

(i) a term or definition incorporated by reference into this Service Contract remains in force notwithstanding that the document from which it was referred may at any time be no longer in force; and

(j) gender reference includes all genders.

16.3. Headings are inserted for convenience and do not affect the interpretation of this Service Contract.

16.4. The following words have the following meanings:

“**PTE**” means P&T Industries Pty Ltd trading as Price Trandos Engineering [ACN 145 722 238]

“**Business Day**” means any day on which trading banks in Western Australia are open for business;

“**Customer**” means any Person to whom PTE provides services;

“**Day**” means the period of time commencing at midnight and ending 24 hours later;

Goods means switchboards and panel boards which PTE have been engaged by the Customer to service or supply;

“**Loss**” means any delay, loss, liability, damage, expense or cost, and includes, without limitation, direct or consequential loss or damage.

“**Person**” includes a firm, a body corporate, an unincorporated association and an authority;

“**Service Contract**” means a contract for the service of the Goods formed between PTE and the Customer pursuant to clause 2.3 of these Terms of Trade;

“**Schedule**” means the time frame indicated by PTE for the completion of works

“**Service Fee**” is the amount payable as stipulated in the Quotation provided by PTE;

“**Standards**” means any of the Australian Standards;

“**Terms of Trade**” means these terms and conditions of sale.