

SALES TERMS

These Sales Terms apply to the supply of all Goods and Services by Hofco Oilfield Services Pty Ltd (Hofco) to the Customer.

Customers should pay special attention to clauses 8, 9, 13 and 14.

1. Purchase Orders

1.1 Ordering procedure

- (a) Where the Customer wishes to acquire Goods or Services, the Customer will send a Purchase Order to Hofco.
- (b) Each such Purchase Order, if accepted in writing by Hofco, forms an agreement between Hofco and the Customer, comprised of the Purchase Order (subject to any amendment of the Purchase Order by Hofco in its acceptance), these Sales Terms and any Credit Terms (if applicable).
- (c) No Purchase Order is binding on Hofco until the earlier of its acceptance in writing by Hofco or Hofco providing the goods or services specified in the Purchase Order.
- (d) The parties may enter into more than one Purchase Order and the details in each Purchase Order only apply to the Goods or Services to be provided under that Purchase Order.

1.2 Priority

To the extent of any inconsistency between these Sales Terms, any Credit Terms and the terms of any Purchase Order, the following order of preference will apply (in descending order):

- (a) Credit Terms;
- (b) Sales Terms; and
- (c) Purchase Order (subject to any amendment of the Purchase Order by Hofco in its acceptance of the Purchase Order).

1.3 Terms of Purchase Orders

Each Purchase Order must contain or incorporate by reference:

- (a) the quantity and description of the Goods or Services to be purchased;
- (b) the price of the Goods or Services unless otherwise specified by Hofco;
- (c) details of any Progress Payments (if applicable); and
- (d) particulars of the proposed delivery of the Goods or Services, including the Delivery Date and Supply Address.

1.4 Variation of Purchase Orders

A Purchase Order may not be varied except with the written consent of Hofco.

1.5 Entry into agreements

- (a) These Sale Terms will apply to and be incorporated into each agreement (which is the only agreement regulating the sale of Goods and supply of Services by Hofco) and prevail over any inconsistent terms or conditions contained or referred to in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification or other document supplied by the Customer or implied by law, trade custom, practice or course of dealing.
- (b) A purchase order for Goods or Services given by a person to Hofco, or a person's acceptance of a quotation for selling Goods or Services from Hofco, constitutes an offer by the person to enter into an agreement for the supply by Hofco of the relevant Goods and Services exclusively on these Sale Terms. No offer by a person will be accepted by Hofco other than:
 - (i) by a written acknowledgement issued and executed by Hofco; or
 - (ii) (if earlier) by the provision of the Goods or Services by Hofco to the person,when an agreement for the supply of the Goods or Services on these Sale Terms will be established between the person (Customer) and Hofco.

2. Price

2.1 Price excludes GST and other costs

The Price, unless otherwise agreed in writing does not include:

- (a) delivery of the Goods or Services to the Supply Address;
- (b) the cost of packaging;
- (c) loading and insurance charges;
- (d) sales tax (where applicable); and
- (e) GST.

2.2 GST

- (a) Terms defined in the GST Act have the same meaning in this clause 2.2 unless defined otherwise in clause 17.1.
- (b) Unless expressly included, the consideration for any Supply under or in connection with these Sales Terms does not include GST.
- (c) To the extent that any Supply made under or in connection with these Sales Terms is a Taxable Supply, the recipient must pay, in addition to the consideration to be provided under these Sales Terms for that Supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply.
- (d) The recovery of any amount in respect of GST by Hofco under these Sales Terms is subject to the issuing of a Tax Invoice or Adjustment Note.

3. Goods delivery and passing of risk

- (a) Delivery occurs and risk of Loss to Goods will pass to the Customer (**Delivery**) on the earlier of:
 - (i) collection of the Goods by the Customer;
 - (ii) delivery of the Goods to the Customer; and
 - (iii) delivery of the Goods by Hofco to a carrier nominated by the Customer or arranged by Hofco for the purpose of delivering Goods to the Customer.
- (b) Hofco is not liable for any failure to Deliver Goods, including by any date agreed in writing by Hofco as the date for Delivery or for delay in Delivery of Goods occasioned by any cause whatsoever, whether or not beyond the control of Hofco.
- (c) Hofco will use its reasonable endeavours to Deliver the Goods in accordance with the terms of a Purchase Order but will not be liable for any Loss connected with a failure to Deliver the Goods in accordance with any particular requirements of the Customer.
- (d) Failure to Deliver part or all of the Goods the subject of a Purchase Order at any agreed Delivery time will not entitle the Customer to terminate the Purchase Order or to claim compensation of any nature.
- (e) The Customer is not entitled to reject Goods on the basis of late Delivery.

4. Services terms

- (a) The Customer may request a Service Quote in relation to Services to be provided by Hofco.
- (b) The Services performed in connection with a Service Quote are performed subject to the terms of these Sales Terms and to the extent of any inconsistency between any of the terms of the Sales Terms and the terms of any Service Quote (if relevant), these Sales Terms prevail.
- (c) The Price estimate contained in a Service Quote:
 - (i) is an estimate only and may have been prepared by a visual inspection of the Serviced Equipment only; and
 - (ii) is based, as applicable, on award rates, prices of material, general factory costs, general overhead charges, insurance and exchange rates, customs duties and other costs existing as at the date of the Service Quote and any changes to such matters either before acceptance or during the provision of the Services are

payable by the Customer in addition to the Price estimate set out in the Service Quote.

- (d) The Customer agrees that where Hofco, following the commencement of Services, considers that additional work, parts or other materials are required for the Services which are not provided for in the Service Quote, Hofco may, in its absolute discretion, cease providing the Services and request that the Customer accept a revised Service Quote in respect of the Services. The Customer acknowledges and agrees that it must make payment for any Services performed by Hofco prior to the issuance of the revised Service Quote.
- (e) The Customer agrees that Hofco is not liable or responsible for any Loss suffered by the Customer arising by, through or in connection with:
 - (i) Hofco's repair of the Serviced Equipment;
 - (ii) any delay in the repair of the Serviced Equipment including due to acts of God, war or strikes or lockout, or any other cause beyond Hofco's control or as a result of its inability to procure the parts and other materials necessary for the purposes of the relevant Services; and
 - (iii) the increase in costs of material and/or labour.

5. Security Interests

5.1 Retention of title - Goods supplied

- (a) Notwithstanding that risk in Goods passes pursuant to clause 3, title to and ownership of Goods remains with Hofco and does not pass to the Customer until such time the Customer has paid in full for the Goods and the Customer has paid all other amounts owing to Hofco.
- (b) The Customer acknowledges that until such time as title to and ownership of Goods passes to the Customer, the Customer is in possession of the Goods for and on behalf of Hofco as bailee.
- (c) Subject to clause 5.1(e), until payment is made for Goods, the Customer will store those Goods separately and in such a manner that they are clearly identified as the property of Hofco.
- (d) The Customer grants to Hofco an irrevocable licence to enter any of the Customer's premises, exercisable upon a Termination Event, which licence to enter permits Hofco (and its personnel) at its sole option to enter the Customer's premises and repossess and remove all Goods on the premises for which title has not passed to the Customer. The Customer consents to such actions and agrees that Hofco will not be liable for any Loss suffered by the Customer as a result of Hofco taking such actions.
- (e) Until such time as title to and ownership of the Goods passes to the Customer in accordance with clause 3, the Customer must not, without written consent of Hofco:
 - (i) grant or register, permit to be granted or registered or permit the creation of any Security Interest over any of the Goods in favour of another person which rank in priority to Hofco's Security Interest in the Goods; or
 - (ii) sell or dispose or give possession or control of the Goods to another person.

5.2 Services lien

- (a) The Customer must, if requested by Hofco, make full payment for Services prior to the relevant Serviced Equipment leaving the possession of Hofco or on such further or other terms as Hofco may agree in writing.
- (b) The Customer agrees that Hofco has a lien over, and may in its absolute discretion, retain possession of any Serviced Equipment until such time as all amounts which are owing by the Customer to Hofco in connection with Services have been paid in full.
- (c) If a Customer has not confirmed the terms of a Service Quote within one month from the date of that Service Quote, then Hofco may charge a rental fee to the Customer for the physical space occupied by the Serviced Equipment, based on the working value of the workshop area occupied. The Customer

agrees that Hofco may retain the Serviced Equipment until full payment of that rental fee together with any additional charges for work undertaken in connection with the preparation of the Service Quote, has been received.

- (d) If any person (other than the Customer) claims right, title or interest in Serviced Equipment and tenders full payment of the amounts owing to Hofco in connection with the relevant Services, then subject to Hofco giving the Customer 48 hours written notice, Hofco may accept that payment and release the Serviced Equipment to that person and the Customer waives all liability of Hofco for any Loss arising as a result of the release of the Serviced Equipment.

6. Payment

6.1 Invoicing

Hofco will invoice the Customer for each Purchase Order (the **Invoice**), in writing with each Invoice setting out the Price and the quantity of Goods or Services supplied for the relevant Purchase Order.

6.2 Payment

Subject to clause 6.3, the Customer must pay the Price for the Goods or Services supplied to the Customer:

- (a) in Immediately Available Funds in accordance with the terms of payment set out in the Credit Terms or if not set out therein, within 30 days from the date of Hofco's Invoice, time being of the essence in call cases; or
- (b) in any other way that Hofco directs in writing to the Customer.

6.3 Progress Payments

Hofco may request that the Customer make one or more upfront or Progress Payments in respect of particular Goods or Services.

7. Goods and Services warranties

7.1 Goods warranties

- (a) **Manufacturer warranties** - Goods are supplied in accordance with the manufacturer's specific warranty (if any) (**OEM Warranty**) which applies directly between the Customer and the manufacturer. Copies of the applicable manufacturer's warranty statements are available on request.
- (b) **Other Goods warranty** - unless expressly notified by Hofco to the Customer, Hofco gives no warranty to the Customer in respect of Goods. Hofco may offer in writing a specific warranty (**Hofco Warranty**) in relation to specific Goods. Copies of applicable warranty statements are available on request.
- (c) **Used Goods** - used Goods are sold in an 'as is' condition. To the maximum extent permitted by law, no warranty of any kind is implied or given by Hofco in relation to used Goods.

7.2 Services warranties

- (a) Services may be supplied subject to the standard of the manufacturer's service manual for the relevant Serviced Equipment or if there is no such manual, Best Industry Practices (also, a **Hofco Warranty**).
- (b) Parts supplied by Hofco in carrying out Services are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the manufacturer's warranty statements are available on request.

8. Safety and Operation

- (a) The Customer must ensure that all relevant Legal Requirements and safety standards relating to the safe use and handling of Goods or Services are complied with and that the Customer's use of Goods or Services does not place the public, the community or the environment at risk of injury, illness or damage.
- (b) The Customer must ensure its employees and other persons working on or around the Goods or where Services are being provided:
 - (i) employ the highest practical standards appropriate in the on-shore oilfield industry in Australia;

- (ii) take active steps, including review of operating manuals, to ensure they are familiar with the safe operation and operating parameters of the Goods or use of the Services;
 - (iii) are fit for duty and not under the influence of drugs or alcohol; and
 - (iv) are appropriately briefed by the Customer as to the site, safe work systems, restricted zones and any applicable lift plans or studies.
- (c) The Hirer must, in respect of Equipment during the Term:
- (i) operate the Goods and receive the Services in accordance with all Legal Requirements (including those relating to the environment or the use and protection of the environment);
 - (ii) ensure persons operating Goods or Other Equipment while Services are being provided:
 - (A) are suitably trained on its safe and proper use, qualified to use the Goods and other Equipment and where necessary, hold a current licence to perform high risk work;
 - (B) wear suitable clothing and protective equipment when operating the Goods or Other Equipment as required or recommended by the manufacturer;
 - (C) ensure that no persons operating the Goods or Other Equipment are under the influence of drugs or alcohol;
 - (D) conduct a job safety analysis prior to using the Goods or Other Equipment; and
 - (E) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Goods or Other Equipment;
 - (iii) display all safety signs and instructions (as required by a Legal Requirement) on or about the Goods or Other Equipment;
 - (iv) ensure that all instructions and signs are observed by operators of the Goods and Other Equipment; and
 - (v) ensure the safe loading, securing and transporting of all Goods and Other Equipment in accordance with all Legal Requirements and manufacturer's guidelines, including by observing any safety directions advised by Hofco and/or the manufacturer of the Goods or Other Equipment to ensure its safe loading and handling;
- (d) operate the Goods and Other Equipment in accordance with all Legal Requirements (including those relating to the environment or the use and protection of the environment); and.
- (e) If the Goods or Other Equipment is involved in any accident resulting in injury to persons or damage to property, all provisions of the *Queensland Work Health and Safety Act* (2011) relating to notification of accidents and incidents must be strictly adhered to.
- 9. LIMITATION OF LIABILITY**
- (a) **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUSTOMER'S ONLY CLAIM AGAINST HOFCO IN RELATION TO ANY GOODS OR SERVICES HOFCO PROVIDES TO THE CUSTOMER, ARE THE HOFCO WARRANTIES AND THE CUSTOMER'S SOLE REMEDY IN RELATION TO BREACH BY HOFCO OF A HOFCO WARRANTY IS:**
- (i) **IN THE CASE OF GOODS:**
 - (A) **THE RE-SUPPLY BY HOFCO OF THE GOODS OR PROVISION OF ALTERNATIVE GOODS HOFCO REASONABLY CONSIDERS EQUIVALENT TO THEM, TO THE EXTENT THAT HOFCO IS ENTITLED TO THE SAME FROM ITS SUPPLIER OF THE GOODS; OR**
- (B) **TRANSFER BY HOFCO TO THE CUSTOMER OF ANY REMEDIES AVAILABLE TO HOFCO AGAINST ITS SUPPLIER OF THE GOODS; OR**
- (ii) **IN THE CASE OF SERVICES, THE RE-SUPPLY BY HOFCO OF THE SERVICES OR SERVICES HOFCO REASONABLY CONSIDERS TO BE EQUIVALENT TO THEM.**
- (b) **DESPITE ANYTHING IN THESE SALES TERMS, THIS CLAUSE 9 SETS OUT THE ENTIRE FINANCIAL LIABILITY OF HOFCO (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS) TO THE CUSTOMER IN RESPECT OF:**
- (i) **ANY CLAIM BY THE CUSTOMER AGAINST HOFCO UNDER OR IN RELATION TO THESE SALES TERMS, ANY PURCHASE ORDER OR THEIR SUBJECT MATTER;**
 - (ii) **ANY USE MADE BY THE CUSTOMER OF GOODS OR SERVICES OR ANY PART OF THEM; AND**
 - (iii) **ANY REPRESENTATION, STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) ARISING UNDER OR IN CONNECTION WITH A THESE SALES TERMS, ANY PURCHASE ORDER OR THEIR SUBJECT MATTER OR THE PROVISION BY HOFCO OF GOODS OR SERVICES.**
- (c) **UNDER NO CIRCUMSTANCES WILL HOFCO BE LIABLE TO THE CUSTOMER FOR ANY CONSEQUENTIAL LOSS.**
- (d) **WITHOUT LIMITING ANY OTHER PROVISION OF THIS CLAUSE 9, HOFCO'S TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE, OR CONTEMPLATED PERFORMANCE OF ANY PURCHASE ORDER OR THESE SALES TERMS, WILL BE 10% OF THE VALUE OF THE GOODS OR SERVICES IN RELATION TO WHICH HOFCO'S LIABILITY ARISES.**
- (e) **WITHOUT LIMITING ANY OTHER PROVISION OF THIS CLAUSE 9, THE CUSTOMER WILL HAVE NO CLAIM AGAINST HOFCO IN RELATION TO PROVISION OF ANY GOODS OR SERVICES AND THE CUSTOMER RELEASES AND DISCHARGES HOFCO IN RESPECT OF SUCH CLAIMS, IF THE CUSTOMER DOES NOT NOTIFY HOFCO OF THE CLAIM IN WRITING WITHIN 3 MONTHS OF DELIVERY OF THE GOODS OR PROVISION OF THE SERVICES TO WHICH IT RELATES AND WITHIN 1 MONTH OF THAT DATE, THE CLAIM HAS NOT BEEN AGREED, COMPROMISED OR SETTLED OR THE CUSTOMER HAS NOT COMMENCED LEGAL PROCEEDINGS AGAINST HOFCO IN RESPECT OF THE CLAIM.**
- (f) **ALL CONDITIONS, TERMS, REPRESENTATIONS AND WARRANTIES THAT ARE OR MIGHT OTHERWISE BE IMPLIED BY LAW, PRACTICE, TRADE USAGE, OR INTERNATIONAL CONVENTION, ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET OUT IN THESE SALES TERMS, HOFCO GIVES OR WILL BE BOUND BY NO WARRANTY, REPRESENTATION OR CONDITION AND EXCLUDES ALL IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY TYPE, INCLUDING AS TO THE FITNESS OF THE GOODS OR SERVICES FOR ANY USE OR PURPOSE.**
- (g) **PROVISIONS OF THE AUSTRALIAN CONSUMER LAW AND OTHER LEGISLATION IN SOME CASES EITHER CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED OR CAN ONLY BE RESTRICTED OR MODIFIED TO A LIMITED EXTENT. IF ANY PROVISION OF THAT TYPE APPLIES, THEN TO THE EXTENT PERMITTED BY LAW, HOFCO'S**

LIABILITY UNDER THE PROVISION IS LIMITED AS FOLLOWS: HOFCO'S LIABILITY IN RELATION TO SUPPLY OF GOODS IS LIMITED AT ITS OPTION TO REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS OR REPAIR OF THE GOODS OR PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS OR PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED OR MODIFIED.

- (h) THE HIRER WILL NOT RELY ON ANY INFORMATION, ADVICE, WARRANTY, REPRESENTATION OR RECOMMENDATION OF ANY NATURE GIVEN BY HOFCO OR ITS PERSONNEL, INCLUDING ANY FISHING TECHNICIAN PROVIDED BY HOFCO TO THE HIRER. THE HIRER WILL BE SOLELY RESPONSIBLE FOR THE ACTS OR OMISSIONS OF THE FISHING TECHNICIAN WHO IS DEEMED TO ACT OR FAIL TO ACT UNDER THE DIRECTION AND CONTROL OF THE HIRER AND AT THE SOLE RISK OF THE HIRER. THE HIRER INDEMNIFIES AND AGREES TO HOLD HARMLESS HOFCO AND THE FISHING TECHNICIAN FROM AND AGAINST ALL CLAIMS, COSTS, DAMAGES, LOSSES OR EXPENSES SUFFERED OR INCURRED BY THE HIRER DIRECTLY OR INDIRECTLY IN CONNECTION WITH OR CAUSED BY THE ACTS OR OMISSIONS OF THE FISHING TECHNICIAN WHILST ENGAGED BY THE HIRER.
- (i) THE CUSTOMER DISCHARGES HOFCO AND INDEMNIFIES AND HOLDS HOFCO HARMLESS FROM AND AGAINST ALL CLAIMS, COSTS, DAMAGES, LOSSES OR EXPENSES OF ANY KIND HOWSOEVER ARISING UNDER TORT (INCLUDING BUT LIMITED TO NEGLIGENCE), CONTRACT, STRICT LIABILITY, STATUTE OR OTHERWISE IN RELATION TO ANY CLAIM AGAINST HOFCO THAT THIS CLAUSE 9 PURPORTS TO EXCLUDE OR WHICH IS EXCLUDED BY THIS CLAUSE 9 (IGNORING THE EFFECT OF CLAUSE 16.1).
- (j) THE CUSTOMER ACKNOWLEDGES AND REPRESENTS AND HOFCO RELIES ON SUCH ACKNOWLEDGEMENT AND REPRESENTATION IN ENTERING INTO AN AGREEMENT WITH THE CUSTOMER, THAT THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF WARRANTIES AND CLAIMS IN FAVOUR OF HOFCO IN THESE TERMS AND CONDITIONS ARE A LEGITIMATE REDUCTION BY HOFCO OF ITS BUSINESS RISKS THAT ARE REFLECTED IN THE PRICES HOFCO CHARGES THE CUSTOMER AND THAT THEIR REMOVAL FROM THESE TERMS AND CONDITIONS WOULD REQUIRE HOFCO TO MATERIALLY INCREASE PRICES IT CHARGES THE CUSTOMER.
- (k) WITHOUT LIMITING CLAUSE 9 AND 10, ANY GOODS SPECIFICATIONS OR PERFORMANCE FIGURES PROVIDED BY HOFCO ARE APPROXIMATIONS AND ONLY FOR GENERAL GUIDANCE. THE CUSTOMER DOES NOT RELY ON ANY REPRESENTATION MADE OR IMPLIED BY HOFCO OR ARISING OUT OF OR IMPLIED BY HOFCO'S CONDUCT, NOR UPON ANY DESCRIPTION, ILLUSTRATION OR SPECIFICATION CONTAINED IN ANY DOCUMENT PRODUCED BY HOFCO. TO THE EXTENT THAT HOFCO HAS MADE OR IMPLIED, OR BY CONDUCT GIVEN RISE TO OR IMPLIED, ANY REPRESENTATION THAT IS NOT EXPRESSLY STATED IN THESE SALE TERMS, THE CUSTOMER IS NOT PROCEEDING IN RELIANCE ON THAT REPRESENTATION BECAUSE THE CUSTOMER HAS HAD AND TAKEN THE OPPORTUNITY TO INDEPENDENTLY CHECK, VERIFY AND FORM THE CUSTOMER'S OWN VIEW ABOUT THE SIGNIFICANCE, AND THE ACCURACY OR OTHERWISE, OF THE REPRESENTATION AND THE CUSTOMER RELIES EXCLUSIVELY UPON ITS OWN SUCH ENQUIRIES.

10. General Representations and warranties

10.1 Reliance

The Customer acknowledges that Hofco is relying on the representations and warranties made to it by the Customer in connection with these Sales Terms.

10.2 Representations

The Customer represents and warrants to Hofco that:

- (a) if it is a company:
- (i) it is duly incorporated and validly existing under the laws of its place of incorporation;
 - (ii) it has the corporate power to own its own assets and to carry on its business as it is now being conducted; and
 - (iii) the Customer Representatives have authority to bind the Customer in respect of any matters stated in these Sales Terms and each Purchase Order;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of the Sales Terms and each Purchase Order, in accordance with its terms;
- (c) it has power to enter into and perform its obligations under the Sales Terms and each Purchase Order and to carry out the transactions contemplated by the Sales Terms and each Purchase Order;
- (d) its obligations under the Sales Terms and each Purchase Order are valid and binding and are enforceable against it in accordance with their respective terms;
- (e) the execution, delivery and performance of the Sales Terms and each Purchase Order and the transactions under them do not:
- (i) if applicable, breach its constitution or other constituent documents or any relevant trust deed or partnership agreement;
 - (ii) breach any law or decree of any court or official directive which is binding on it;
 - (iii) violate any other document or agreement to which it is expressed to be a party or which is binding on it or any of its assets; or
 - (iv) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding (which has not been disclosed to the other party in writing) has been commenced, is pending or, to its knowledge, threatened in writing against it which is likely to have an adverse effect upon it or its ability to perform its financial or other obligations under the Sales Terms and each Purchase Order;
- (g) the Customer, using reasonable skill and having appropriate expertise, personnel and experience, has conducted enquiries concerning and examination of, the Goods and on that basis, has satisfied itself that the Goods satisfy all the Customer's requirements and Legal Requirements;
- (h) the Customer will only operate the Goods or Other Equipment in accordance with all Legal Requirements (including those relating to the environment or the use and protection of the environment);
- (i) the Customer will only use the Goods, Serviced Equipment or Other Equipment for its intended purpose and in accordance with the manufacturer's instructions;
- (j) The Customer has decided for what purpose to use the Goods or Services and the Customer alone is responsible for determining its technical requirements;
- (k) an Insolvency Event has not occurred in relation to it; and
- (l) unless expressly stated, it does not enter into the Sales Terms or any Purchase Order as a trustee.

11. Confidentiality

11.1 Obligation of confidentiality

- (a) Subject to clause 10.2, the Customer must keep secret and confidential, and must not divulge or disclose any of Hofco's

Confidential Information or use Hofco's Confidential Information for a purpose unrelated to the Customer's use of Goods or Services.

- (b) The Customer must take all reasonable steps to ensure that any person to whom it discloses Confidential Information under the Sales Terms or a Purchase Order does not make public, or disclose, the Confidential Information or use Hofco's Confidential Information for a purpose unrelated to the Customer's use of Goods or Services.
- (c) If a Customer delegates any of its authorities, powers, duties or discretion under the Sales Terms or a Purchase Order to an entity or person who is not a director, officer or employee of the Customer (**Delegate**), Hofco may request the Customer to procure the Delegate to enter into a confidentiality agreement with Hofco prior to any of the Confidential Information being provided to the Delegate.

11.2 Exceptions

Clause 10.1 does not apply where the relevant Confidential Information:

- (a) is public knowledge (other than as a result of a breach of any obligation of confidentiality owed to Hofco);
- (b) is required by law to be disclosed, provided the Customer has notified Hofco of such requirement as soon as possible after becoming aware of such requirement; or
- (c) is disclosed to the Customer's directors, officers, employees, financial advisers, analysts and legal representatives for the purpose of exercising rights under and performing the Sales Terms or a Purchase Order.

12. Personal Property Securities Law

- (a) The Customer acknowledges that under these Sales Terms the Customer grants Security Interests to Hofco including a retention of title in respect of the Goods (in accordance with clause 5.1) and a lien in respect of the Serviced Equipment (in accordance with clause 5.2).
- (b) The Customer acknowledges that the Sales Terms constitutes a Security Agreement.
- (c) The Security Interests arising under these Sales Terms remain attached to the Goods or Serviced Equipment (as applicable) when the Customer obtains possession of the Goods or Serviced Equipment (as applicable) and the parties confirm that they have not agreed that any Security Interest arises under these Sales Terms at any later time.
- (d) The Customer acknowledges that Hofco may at any time perfect its Security Interests by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act.
- (e) The Customer undertakes to do anything reasonably required by Hofco to enable Hofco to register its Security Interests, with the priority Hofco requires and to maintain the registration.
- (f) The Customer must pay Hofco all registration and enforcement costs and expenses which Hofco may incur in:
 - (i) preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interests that are granted to Hofco under these Sales Terms;
 - (ii) maintaining those registrations; and
 - (iii) enforcing any Security Interests granted to Hofco under these Sales Terms.
- (g) Hofco does not need to give the Customer any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.
- (h) The parties agree that neither party will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

- (i) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these Sales Terms except that the following provisions of the PPS Act will not apply:
 - (i) section 95 (notice of removal of accession), to the extent that it requires Hofco to give a notice to the Customer;
 - (ii) subsection 121(4) (enforcement of liquid assets - notice to grantor);
 - (iii) section 125 (obligation to dispose of or retain collateral);
 - (iv) section 130 (notice of disposal), to the extent that it requires Hofco to give the Customer a notice;
 - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (vi) subsection 132(4) (statement of account if no disposal);
 - (vii) section 135 (notice of retention);
 - (viii) section 142 (redemption of collateral); and
 - (ix) section 143 (reinstatement of security agreement).

13. Intellectual Property

The Customer acknowledges that Hofco is and remains the owner of all Intellectual Property Rights used on or in relation to the Goods and Services and advertising materials supplied in connection with the Goods and Services.

14. Termination

- (a) It is a Termination Event if:
 - (i) any amount payable by the Customer to Hofco is not paid when due;
 - (ii) the Customer breaches a fundamental term of these terms and conditions and fails to remedy the breach within 7 days of request by Hofco to do so;
 - (iii) the Customer makes any false representation (whether by act or omission) in respect of the Credit Application;
 - (iv) the Customer breaches or fails to comply with any term of the Credit Terms;
 - (v) an Insolvency Event occurs with respect to the Customer or a guarantor of the Customer's indebtedness to Hofco;
 - (vi) any guarantor of the Customer's indebtedness to Hofco revokes a guarantee; or
 - (vii) a Change in Control of the Customer occurs.
- (b) If a Termination Event occurs Hofco is entitled (without prejudice to any other right or remedy) at its option, to immediately do any one or more of the following:
 - (i) declare all amounts actually or contingently owing by the Customer to Hofco, whether or not due and payable, to be immediately due and payable;
 - (ii) refuse to supply Goods or Services to the Customer;
 - (iii) terminate the Sales Terms and refuse to provide credit to the Customer; or
 - (iv) repossess and remove all Goods for which title has not passed to the Customer in accordance with clause 5.1(d).

15. Inspection Services

- (a) Where Hofco provides Inspection Services, Hofco will give the customer a report in writing (**Report of Findings**) derived from the results of inspection or testing procedures used by Hofco.
- (b) Inspection or testing procedures used by Hofco will in each case be determined either by the Customer's instructions to Hofco or in their absence or to the extent deficient, technical standards, trade usage or such other matters as Hofco deems appropriate.
- (c) Should Customer request that Hofco witness any third party intervention:
 - (i) the Customer agrees that Hofco's only responsibility is to be present at the time of the third party's intervention and to forward the results, or confirm the occurrence of the intervention; Hofco will not be responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied,

the qualifications, actions or omissions of third party personnel or the analysis results; and

- (ii) any documents received by Hofco reflecting agreements between the Customer and third parties or any other third party documents, will not, in the absence of express agreement by Hofco to the contrary in writing, extend or restrict the scope of the Inspection Service or the obligations accepted by Hofco and Hofco will incur no obligations to third parties under any circumstances.
- (d) Reports of Findings issued by Hofco will reflect the facts as recorded by Hofco at the time of its intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the parameters contemplated in clause 15(b); Hofco is under no obligation to refer to, or report upon, any facts, matters or circumstances that are outside the specific instructions received or parameters expressly applied.
- (e) The Customer acknowledges that Hofco, by providing the Inspection Services, does NOT relieve or release the Customer (or third parties engaged by the Customer) from any of their obligations howsoever arising. Under no circumstances will Hofco assume or become bound by or guarantee any duty of the Customer to any third party or of any third party to the Customer.

16. General

16.1 Competition and Consumer Act 2010 (Cth)

- (a) If an agreement between a Customer and Hofco is a "consumer contract" or a "small business contract" subject to sections 23(3) or 23(4) of the *Competition and Consumer Act 2010 (Cth)*, then:
 - (i) Hofco's liability under clause 9(d) is limited as therein provided to the value of the relevant Goods and Services;
 - (ii) Clause 16.2(a) is deleted and replaced with "Hofco's rights and obligations arising out of or under an agreement entered into pursuant to these Sales Terms are not assignable by Hofco without the Customer's prior written consent, which will not be unreasonably withheld;
 - (iii) clause 16.7 does not operate to amend any agreement entered into pursuant to these Sales Terms pursuant to clause 1.5.

16.2 Assignment

- (a) Hofco may transfer, assign, novate or sub-contract any of its rights or obligations under the Sales Terms without the prior written consent of the Customer.
- (b) The Customer's rights and obligations arising out of or under the Sales Terms are not assignable by the Customer without Hofco's prior written consent.

16.3 Further Assurances

The Customer must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to Hofco) required by law or reasonably requested by Hofco to give effect to these Sales Terms or any obligation under them.

16.4 Waiver

- (a) Waiver of any right by Hofco arising from a breach of these Sales Terms by the Customer or on the occurrence of a Termination Event must be in writing and executed by Hofco.
- (b) A failure to exercise, a delay in exercising, or a partial exercise of, a right by Hofco created under or arising from a breach of these Sales Terms or on the occurrence of a Termination Event does not result in a waiver of that right.

16.5 Relationship between the parties

These Sales Terms are not intended to create a partnership, joint venture or agency relationship between the parties.

16.6 Severability

- (a) A provision of, or the application of a provision of, these Sales Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of:
 - (i) that provision in any other jurisdiction; or
 - (ii) the remaining provisions in that or any other jurisdiction.
- (b) Where a clause in these Sales Terms is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these Sales Terms.

16.7 Variation of Sales Terms

Hofco may, in its absolute discretion, vary these Sales Terms (including the withdrawal of credit) at any time by notice to the Customer by any of the following methods:

- (a) by written notice to the address listed in section 1 (*Details of Customer*) of the Credit Application;
- (b) by email sent to the email address listed in section 1 (*Details of Customer*) of the Credit Application; or
- (c) by uploading the varied Sales Terms onto the public website of Hofco.

16.8 Entire agreement

The Sales Terms replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

16.9 Governing law and jurisdiction

These Sales Terms are governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

17. Definitions

17.1 Defined Terms

In these Sales Terms, unless the context clearly indicates otherwise:

Administrator means a receiver, receiver and manager, judicial manager, liquidator, administrator or like official.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

Best Industry Practices means the standard that can be expected of a reasonably competent provider of services similar to the Services, in Hofco's industry and of a similar size to Hofco.

Change in Control means a change in Control from the position applying on the date of the Rental Agreement.

Claim means any claim, demand, suit, proceeding, action, damages, loss, liability, costs, charges, expenses, outgoings or payments suffered, paid or incurred or threatened, including those arising in contract (including, but not limited to, breach of warranty), those arising in tort (including, but not limited to, misrepresentation or negligence), those arising under statute, those in relation to any breach of an agreement or deed, those based on any statement, representation, warranty, promise, indemnity or undertaking and damages or compensation of any nature and on any grounds.

Consequential Loss means:

- (a) in the case of loss or damage resulting from a breach of contract, by virtue of any breach of any fiduciary obligation, by virtue of any actionable wrongful act, or under any other principle of equity, by virtue of any breach of any statutory duty, or under any other legal doctrine, principle or theory all:
 - (i) loss of revenue (other than revenue derived directly from payments for Goods or Services to be made, or which represents the value of Goods or Services required to be delivered or provided, under the express terms of these Sales Terms);
 - (ii) loss of profit (other than profit derived directly from payments for Goods or Services to be made, or the turning to account of the value of Goods or Services required to be delivered or provided, under the express terms of these Sales Terms);

- (iii) loss or denial of opportunity, loss of access to markets, loss of goodwill or loss of business reputation;
 - (iv) increased overhead costs; and
 - (v) all other loss which is indirect, remote or unforeseeable loss or loss resulting from some supervening event or special circumstance, whether or not in the reasonable contemplation of the parties at the time of execution of these Sales Terms as being a probable result of the relevant breach; and
- (b) in the case of loss or damage arising from any tort (which expression, for the purposes of this definition, includes any breach of a contractual duty of care and also negligence) - all loss of the kind described in paragraph (a) of this definition, all other loss which is indirect, remote or unforeseeable loss and all pure economic loss of any kind not flowing directly from the commission of the tort;
- (c) without limiting (a) or (b), any representation, warranty or condition other than a Hofco Warranty.

Credit Application means the application by a Customer for provision of trade credit by Hofco.

Credit Terms means the terms upon which Hofco has agreed to provide trade credit to the Customer in response to an application by the Customer for trade credit.

Customer means the person seeking credit as set out in section 1 (*Details of Customer*) of the Credit Application. **Customer**

Representative means a duly authorised representative of the Customer advised by the Customer to Hofco in writing.

Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to Hofco's business or a Purchase Order.

Control means the ability to control the composition of the board of directors of the Customer.

Delegate has the meaning given to that term in clause 10.1(c).

Delivery has the meaning given in clause 3.

Delivery Date means the date specified as such in the Purchase Order for the delivery of Goods or Services.

Goods means the goods, equipment, components, parts, accessories and materials supplied, or to be supplied, by Hofco to the Customer as requested by the Customer from Hofco.

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

Hofco means Hofco Oilfield Services Pty Ltd ABN 65 010 166 702.

Hofco Warranty is defined in clauses 7.1(b) and 7.2(a).

Immediately Available Funds means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by Hofco.

Insolvency Event means where the Customer:

- (a) is insolvent, bankrupt or unable to pay its debts as they fall due;
- (b) enters into an arrangement with its creditors;
- (c) takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up or bankruptcy of the Customer; or
- (d) has a winding-up or bankruptcy order made against it or passes a resolution for winding-up or bankruptcy.

Inspection Services means the inspection of equipment by Hofco using methods and to standards agreed in writing with the Customer or as represented in writing by Hofco.

Intellectual Property Rights means all intellectual property rights throughout the world, whether present or future, including rights in relation to copyright, trade secrets, know how, trademarks (whether registered or unregistered or whether in word or logo/device form), brand names, designs, patents and patentable inventions, semiconductor or circuit layout rights, including the right to apply for registration of any such rights.

Invoice has the meaning given to that term in clause 6.1.

Legal Requirement means a requirement under any approval, statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Loss means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a solicitor/client basis.

Other Equipment means goods, equipment, components, parts, accessories and other materials excluding Goods and Serviced Equipment.

Personnel means the directors, officers, employees, servants, agents, representatives, invitees of the relevant party or any of its Related Bodies Corporate.

PPS Act means the *Personal Property Securities Act 2009*.

Purchase Order means an order to purchase Goods or Services pursuant to clause 1, issued by the Customer to Hofco and accepted by Hofco as contemplated in clause 1.1(c).

Price means the price of the Goods or Services as specified by Hofco.

Progress Payment means that portion of the Price, if any, payable in accordance with clause 6.3.

Related Bodies Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Sales Terms means the terms and conditions set out in this document (*Sales Terms*), as amended from time to time.

Security Agreement means a security agreement within the meaning of the PPS Act.

Security Interest means a security interest within the meaning of the PPS Act.

Service Quote means an estimate of the Price of a Service provided by Hofco to the Customer.

Services means the services supplied, or to be supplied, by Hofco to the Customer as ordered by the Customer from Hofco and confirmed by Hofco and where appropriate, includes Inspection Services.

Serviced Equipment means goods, equipment, components, parts, accessories and other materials which are owned, leased or hired by the Customer and which are the subject of Services provided by Hofco.

Supply Address means the address of the premises to which Goods are to be delivered or at which Services are to be performed.

Termination Event has the meaning set out in clause 13.

Verification Statement means a verification statement within the meaning of the PPS Act.

17.2 Interpretation

In these Sales Terms:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of these Sales Terms.
- (b) The singular includes the plural and the plural includes the singular.
- (c) The word 'includes' in any form is not a word of limitation.
- (d) Words of any gender include all genders.
- (e) Other parts of speech and grammatical forms of a word or phrase defined in these Sales Terms have a corresponding meaning.
- (f) An expression importing a person includes any Hofco, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (g) A reference to a clause, party, schedule or attachment is a reference to a clause of, and a party, schedule or attachment to, these Sales Terms and a reference to these Sales Terms includes any schedule and attachment.

- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than these Sales Terms includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to insolvency includes appointment of an Administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (n) No provision of these Sales Terms will be construed adversely to a party because that party was responsible for the preparation of these Sales Terms or that provision.
- (o) A reference to dollars or \$ is a reference to the lawful currency of Commonwealth of Australia unless expressly stated to the contrary.
- (p) A reference to a body, other than a party to these Sales Terms (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.