

General PrimeServ Terms and Conditions

1 INTERPRETATION

1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:

"**Australian Consumer Law**" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any equivalent applicable Australian state or territory legislation;

"**Buyer**" means the person, firm or company that has requested any Work identified in the Order;

"**Conditions**" means the General PrimeServ Terms and Conditions set out herein;

"**Consumer Guarantee**" means a right or guarantee the Buyer may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as terms implied into a Contract) that cannot lawfully be excluded;

"**Contract**" means any contract for Work between the Buyer and Everllence;

"**Goods**" means goods supplied by Everllence which refer to Everllence's product range of diesel engines and turbochargers for such engines (as defined in Everllence's tender or order acknowledgement);

"**IPRs**" means any intellectual property rights of any nature including without limitation any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;

"**Data Protection Legislation**" means all applicable laws and regulations protecting the privacy of individuals and their personal information in the country where the Everllence company concluding the Contract is located.

"**Everllence**" means the company within Everllence group of companies which supplies Goods and/or Services under the Contract, which is Everllence Australia Pty Limited or Everllence New Zealand Ltd;

"**Order**" means an order placed by the Buyer with Everllence for Work;

"**Order Acknowledgment**" means the confirmation of the Order by Everllence under the conditions stated in the order acknowledgment.

"**Services**" means services supplied by Everllence (as defined in Everllence's tender or order acknowledgement);

"**Site**" shall mean the place where the Services are to be performed by Everllence together with so much of the area surrounding the said place as Everllence shall actually use in connection therewith

"**Specialist Personnel**" mean the specialists chosen by Everllence to perform the Services;

"**Work**" means Goods and/or Services.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 FORMATION

2.1 These Conditions apply to the Contract and the Goods and Services to be delivered under this Contract to the exclusion of any other terms and conditions of the Buyer. Variations to the terms of any Contract will only be effective if agreed in writing. If any such agreed variation increases the time or cost to Everllence of performing the Contract then the Contract price and/or programme will be adjusted accordingly.

2.2 Orders from Buyer are only binding on Everllence after a written order acknowledgment has been issued and only on the conditions stated in the order acknowledgment.

2.3 All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only binding to the extent expressly stated in the order acknowledgment or in other documents forming part of the Contract expressly referring to such information.

3 DELIVERY AND NON-DELIVERY AND DELAY

3.1 Unless otherwise expressly agreed in writing by Everllence - delivery times accepted by Everllence are given in good faith but are an estimate only; and

- delivery of the Goods is made "Ex Works" in accordance with Incoterms 2020, but the delivery price is exclusive of packing, which will be charged extra.

3.2 Performance of the Services shall be at the Site specified in Everllence's tender or order acknowledgement.

3.3 Everllence may deliver Goods in instalments and perform Services in sections in any sequence. To the fullest extent permitted by law, default by Everllence, howsoever caused, in respect of one or more instalments and/or sections shall not entitle the Buyer to terminate the relevant Contract as a whole.

3.4 Where:

(a) the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order; or

(b) Everllence agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer; or

(c) the Buyer fails to provide any instructions consents or authorisations required to enable the Goods to be delivered on the due date;

the risk in the Goods shall pass immediately to the Buyer, delivery of the Goods shall be deemed to have taken place and Everllence may store or arrange for storage of such Goods and charge the Buyer for all related costs and expenses (including storage and insurance) and, to the extent Goods have not been paid for by the Buyer, may sell such Goods after expiry of 28 days following such failure or refusal and deduct any monies payable to Everllence by the Buyer from the sale proceeds and charge the Buyer for any shortfall below the Contract price.

3.5 Upon delivery to the Buyer, all Goods should be examined by the Buyer. If the Buyer notifies Everllence of any damage to or defect in the Goods, Everllence's liability will be limited in accordance with clause 10.3(a).

3.6 The Buyer shall notify any shortages in or non-delivery of Goods to Everllence (together with all specific details) in writing within 20 days of the estimated date of delivery. Subject to clause 7.1 and such notice being provided, Everllence shall, if it is convinced that any Goods have not been delivered and the cause thereof being within the reasonable control of Everllence, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods. To the fullest extent permitted by law, this shall be the Buyer's only remedy.

3.7 Subject to clause 7.1, shortages in, or non-delivery some or part of the Goods shall not affect the Contract in respect of the other or other parts of the Goods.

3.8 If the contractual delivery time for the Work or part of the Work is delayed and this delay was within the control of Everllence and the Buyer suffers loss as a result of the delay, the Buyer shall be entitled to liquidated damages for delay. Such liquidated damages for delay shall amount to 0.5% of the Contract price of the delayed part of the Work concerned per each full week of delay considering a grace period of 2 (two) weeks. The liquidated damages for delay will be limited to a maximum of 5% (five per cent) of the Contract price of the delayed part of the Work.

3.9 Where the amount paid or payable for the Goods or Services exceeds AUD 100,000 or the local currency equivalent, liquidated damages shall be Buyer's sole and exclusive measure of damages and remedy against Everllence with respect to the failure to achieve the contractual delivery time for the Work.

4 TITLE

Unless Everllence has been paid in full in advance, the Work will be considered as having been made with Everllence retaining the ownership until the Buyer has made payment in full in respect of the Work completed under the Contract. If the Buyer does not pay when due, Everllence is entitled to take back the Goods that have not been paid for without a court judgment in accordance with the applicable law.

5 PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS

5.1 Unless otherwise agreed, quotations and tenders lapse after 30 days from their date of issue.

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- 5.2 Unless fixed prices have been agreed in writing by Everllence, all sales are made at the prices valid at the date of Everllence's tender or the date of Everllence's order acknowledgement (as the case may be).
- 5.3 Everllence shall neither be entitled nor obliged to implement changes in the scope of supply, before the parties have reached an agreement regarding the corresponding adjustment of the Contract price and the delivery time.
- 5.4 Unless otherwise agreed in writing, prices set out in any of Everllence's price lists, tenders or order acknowledgement are Ex Works (Incoterms 2020) and are exclusive of any taxes, duties, fees, charges or similar and any costs of carriage, package and insurance which shall be payable in addition to the price.
- 5.5 Unless otherwise agreed in writing, sums payable by the Buyer to Everllence shall fall due and be effected by the Buyer net cash not later than 30 days after the date of the invoice. If the sums payable are in dispute, the Buyer must raise a claim for the disputed amount and pay the balance of the invoice by the due date. If any sum payable under the Contract is not paid when due then without prejudice to Everllence's other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per annum over the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.
- 5.6 The set – off with counter claims by the Buyer shall only be allowed with undisputed claims or in accordance with an appropriate court judgment or arbitral award (whichever is applicable in the circumstances).
- 6 PROVISION OF SERVICES**
- 6.1 Unless otherwise expressly agreed in writing Services rendered by Everllence shall be charged on time basis in accordance with Everllence's general rates for personnel valid at the date of the provision of the Services. Such rates are exclusive of board, lodging and transportation and such other facilities as are to be provided by the Buyer free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by Everllence's personnel shall be finally borne by the Buyer. Unless otherwise agreed Everllence's execution of Services is subject to manual assistance being rendered by the Buyer either through engine room staff or other persons made available by the Buyer.
- 6.2 The taking-over of the Works by the Buyer shall be deemed to have taken place at the latest, when the Buyer has received Everllence's notice that the Work has been completed, provided that the Work is as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Work shall not prevent taking-over. The period, referred to in clause 7.1 shall start to run at the latest when the Work is ready for taking-over in accordance with this clause 6.2.
- 6.3 Everllence shall be responsible for the adherence to legal or other regulations applicable at the Site only as far as the Buyer has sufficiently informed Everllence of such regulations in advance.
- 6.4 The daily working time shall be arranged by the Buyer and the Specialist Personnel at the Site, and the actual working time shall be certified on work sheets by the Buyer.
- 6.5 Everllence will present monthly accounts based on the work sheets. Everllence reserves the right to send interim bills during longer service jobs. The final accounts shall be submitted to the Buyer within a reasonable period after the completion of the Works by Everllence.
- 6.6 In the event of illness during employment of the Specialist Personnel, payment of the hourly rates shall be continued for the time during which the Specialist Personnel has to remain in the country where the Site is located owing to illness. During hospitalisation in the country where the Site is located the hourly rates shall be reduced to such special rates mentioned in Everllence's general rates for personnel valid at the date of the provision of the Services. If it is necessary for the incapacitated Specialist Personnel to return home, the travelling costs including allowance and hourly rates for the travelling time shall be borne by the Buyer.
- 6.7 For Services rendered abroad, any costs arising in connection with illness or accidents, e.g. costs of medical treatment, hospital care or similar treatment, and medicine, shall be borne by the Buyer.
- 7 WARRANTY**
- 7.1 Buyers who acquire Goods or Services as "consumers" have a range of rights under consumer guarantees set out in the Australian Consumer Law that cannot be excluded or modified ("Consumer Guarantees"). Nothing in these Conditions is intended to exclude or modify the application of these Consumer Guarantees.
- 7.2 Everllence warrants for a period of 12 months (i) from the date the Goods were delivered, that such Goods are free from substantial defects in materials or manufacture; and/or (ii) from the date the Services were rendered, that such Services were carried out with reasonable skill and care.
- 7.3 Where the amount paid or payable for the Goods or Services is no more than AUD 100,000 or the local currency equivalent, those Goods and Services may also come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with such Services, the Buyer is entitled:
- (a) to cancel its service contract with Everllence; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.
- The Buyer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, the Buyer is also entitled to have the failure rectified in a reasonable time. If this is not done the Buyer is entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. The Buyer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.
- 7.4 For all Goods and Services other than those described in clause 7.3, all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with clause 7.2, are hereby expressly excluded to the fullest extent permitted by law.
- 7.5 The warranty given in clause 7.2 and the warranty obligations will not apply:
- (a) where the defect complained of arises from any drawing, design, specification or intellectual property right supplied by the Buyer or arises from normal wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Work without Everllence's approval or arises from any failure to follow Everllence's advice (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods);
 - (b) if Everllence or its agent is not given a reasonable opportunity to safely inspect the Work;
 - (c) if the total price for the Goods or Services has not been paid by the due date for payment;
 - (d) if the damage was caused by the Buyer's personnel;
 - (e) if the Goods supplied by Everllence are mounted in a Everllence engine for which the Buyer has also used unoriginal parts (i.e. parts which have not been supplied through Everllence or through a Everllence licensee), in which case Everllence does not assume any liability for any damage which may arise; or
 - (f) if clause 15.8 applies.
- 7.6 The obligations of Everllence under the Contract are limited such that in the event of a breach by Everllence of the warranty in clause 7.2 or any defect in any Goods or Services, Everllence shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Goods and/or Services) at its option either to:
- (a) credit the price (if already paid) attributable to the faulty Goods or Services; or
 - (b) give a reasonable price reduction to the Buyer for such faulty Goods or Services which reflects inferiority of the Goods or Services; or
 - (c) repair, rectify or replace the faulty Goods or Services

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provided that the Buyer:

- (d) notifies Everllence at the contact e-mail address specified in the offer or Order Acknowledgment upon becoming aware of any defective Goods or Services along with details of the claim;
- (e) upon validation from Everllence, returns defective Goods to Everllence at the address specified in the offer or Order Acknowledgment in their delivered state at the Buyer's expense if so requested by Everllence within 12 months from the date of their delivery.

- 7.7 Everllence shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect.
- 7.8 Subject to clause 7.1 and clause 7.3, clause 7.6 shall be the Buyer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Buyer.
- 7.9 Everllence shall warrant any subsequent adjustment and/or replacement parts installed to the same extent as the original Goods, but no longer than the remainder of the original warranty period.

8 FORCE MAJEURE

- 8.1 In case of Force Majeure, such as Acts of God (e.g. natural catastrophes but not limited to earthquake, floods, storms, epidemics), civil commotion, labor disputes, accidents (e.g. transport accidents) disruptions of operation, or other delays for which Everllence is not responsible, any Act / Actions of Governmental Authorities (Governmental Authorities in the meaning e.g. federal, state and/or local authorities including but not limited to local or national agency, department, inspectorate, ministry, official court, tribunal), which hinders or impedes the execution of contract (e.g. Act / Actions of Governmental Authorities like shut downs, travel ban/warning, labor law restrictions for dispatch and/or work of employees, quarantine) any other event which was unforeseeable or outside the reasonable control of the party affected, the parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The aforementioned shall also be applicable to Everllence if a sub-supplier of Everllence is affected by such event and/or in case the party concerned is already in default.
- 8.2 Diseases which the World Health Organization (WHO) has declared as a pandemic case, like e.g. the COVID-19 case (including any of its variations) and/or any consequences thereof may either prevent and/or delay either Party from partly or entirely performing any of his obligations (hereinafter referred to as "Disease Effect"). Everllence shall not be liable for the Disease Effect, regardless whether under contract, tort, law, equity, indemnity or any other legal reason.
- 8.3 The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.
- 8.4 In case the Force Majeure situation lasts longer than 120 days, each party shall have the right to terminate this Contract upon written notice.

9 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 9.1 The Buyer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specifications relating thereto either (a) supplied by or on behalf of Everllence to the Buyer in connection with Work, or (b) resulting from Work, unless otherwise expressly agreed by Everllence in writing. If the Buyer shall in any way acquire any such rights then the Buyer shall immediately inform Everllence and shall forthwith take such steps as may be required by Everllence to assign such rights or vest such title in Everllence.
- 9.2 Everllence shall have the right to apply any trademarks, trade names and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of such trademarks, trade names and/or service marks. The Buyer shall not deface, remove or

obliterate any trademarks, trade names or logos applied by Everllence on or in relation to the Goods.

- 9.3 The Buyer shall keep confidential and not use, without the prior written consent of Everllence, all or any information including without limit, those supplied by Everllence to the Buyer or disclosed to or obtained by the Buyer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer, or disclosure of the same is required by law or by any other governmental or other regulatory body.
- 9.4 In the event that Everllence bases the production of the Goods on its own specifications, Everllence shall under the exclusion of any further liability warrant that such Goods do not interfere with IPRs published in USA and/or by the European Patent Office. This shall not apply, if Everllence has manufactured the Goods in accordance with drawings, models or other equivalent descriptions or information provided by the Buyer. As far as Everllence is not liable pursuant to this clause 9.4, the Buyer shall release Everllence from all third-party claims. In case an infringement of such third parties' IPRs appears to emerge, the Parties will enter into negotiations with due consideration of such situation and jointly agree on the consequences.

10 LIMITATION OF LIABILITY

- 10.1 To the fullest extent permitted by law, Everllence shall not be liable to the Buyer in contract, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business contracts, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.
- 10.2 Nothing in these Conditions shall exclude or limit:
 - (a) the liability of Everllence for death or personal injury caused by the Everllence's negligence, intent or fraudulent misrepresentation;
 - (b) the liability of Everllence when Everllence has caused the damage to Buyer's property with intention or gross negligence or by fraudulent misrepresentation;
 - (c) the application of the Consumer Guarantees.
- 10.3 The liability of Everllence in respect of any breach of or failure to comply with any Consumer Guarantee is limited to the following:
 - (a) in the case of Goods, to: (i) the replacement of the Goods or the supply of equivalent goods; (ii) the repair of the Goods; (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the Goods repaired.
 - in the case of Services, to: (i) the supplying of the Services again; or (ii) the payment of the cost of having the Services supplied again.
- 10.4 The liability of Everllence in respect of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 10.3 if the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law or it is not fair or reasonable for the Everllence to rely on such limitation.
- 10.5 Without prejudice to clauses 10.1, 10.2 and 10.3 Everllence's total liability for each Order in contract, tort, law or otherwise arising by reason of or in connection with the Contract shall be limited to the value of that Order.

11 SUSPENSION AND/OR TERMINATION

- 11.1 If the Buyer fails to make any payment when due or to perform any of its other main contractual obligations as well as any secondary contractual obligations on time or the diligent manner, Everllence shall be entitled to suspend its performance of the Contract until the failure is remedied; and regardless of whether Everllence elects to suspend performance:
 - (a) the time for performance of the Contract by Everllence shall be automatically extended accordingly; and
 - (b) any cost (including financial costs and storage, demurrage or other charges) thereby incurred by Everllence shall be paid by the Buyer.
- 11.2 Without prejudice to any of its other rights Everllence may immediately terminate the Contract if any of the following occurs or is likely to occur:

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- (a) suspension under clause 11.1 continues for more than 120 days;
- (b) the Buyer is in breach of any of its obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from Everllence; or
- (c) the Buyer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any other jurisdiction or the Buyer ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due.

11.3 Upon termination under clause 11.2, Everllence shall be entitled to suspend any further work under the Contract without any liability to the Buyer. Without prejudice to Everllence's other remedies under the Contract, within 14 days of such a notice of termination the Buyer shall pay to Everllence:

- (a) the outstanding balance of the Contract price of the Work which has been delivered or performed, and
- (b) the costs incurred or committed by Everllence up to the date of notice of termination in performing such work which is not yet completed plus a reasonable margin to be agreed between the parties which shall not be less than 15% of the Contract price, and
- (c) the costs reasonably incurred by Everllence as a result of the termination.

11.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of clauses 9, 10, 11, 12 and 16.

12 BUYER'S OBLIGATIONS

12.1 The Buyer shall provide Everllence's personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be carried out and ensure that they have free access to the Site.

12.2 The Buyer shall provide Everllence's personnel with unobstructed and safe access to the Site to enable them to perform the Work in accordance with the Contract.

12.3 The Buyer shall be responsible for ensuring the health and safety of Everllence's personnel whilst on the Site. The Buyer shall take appropriate measures to protect Everllence's personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When Everllence is to carry out the Work on the Site, the Buyer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies.

12.4 Everllence may, at its sole discretion, refuse to perform the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/ or where the Buyer is in breach of this clause 12 and Everllence shall not be liable under the Contract for any delay in or failure of delivery in such event.

12.5 The Buyer shall assume all responsibility for all acts or omissions of the Buyer's personnel and Everllence shall have no liability with respect thereto.

12.6 The Buyer shall provide all tools, test equipment and test facilities unless specifically stated otherwise in the Contract. Where Everllence does supply tools then the Buyer shall give all necessary assistance with the customs formalities required for the import and re-export of Everllence's tools and equipment free of all Taxes.

12.7 The Buyer shall provide Everllence with all technical information regarding Everllence and non-Everllence equipment (e.g. technical specifications, drawings, measurements, photographs, etc.) that is necessary for the proper performance of the Services. Everllence may use this information to carry out the purchased Services. Everllence assumes that the Buyer has the appropriate permission to pass on the relevant information and that no agreements with third parties are thus violated.

12.8 The Buyer shall specify a firm delivery address for the ordered Goods at least within 3 weeks after receipt of Everllence's written confirmation of the date of readiness for dispatch. In case Buyer fails to do so and where the Buyer has not paid for the Goods, Everllence is entitled to re-allocate the Goods selected for delivery to the Buyer to a third party and to set

forth a new delivery time to be forwarded to the Buyer for information. In such case the Buyer is not entitled to claim liquidated damages according to clause 3.8.

12.9 On Everllence's request the Buyer shall undertake to arrange suitable accommodation for the Specialist Personnel and to assist in procuring food for the Specialist Personnel. The provision of board and lodging for the Specialist Personnel shall be at the Buyer's expense.

12.10 If suitable accommodation cannot be obtained in the neighbourhood of the Site, the time for travelling between the lodgings and the Site will be charged as working time whenever the actual time for travelling is greater than 30 minutes. In the event of the Specialist Personnel using public transport, the costs incurred thereby shall be borne by the Buyer. The same shall apply to the transportation of equipment and other utilities necessary to perform the Services.

13 EXPORT CONTROL

13.1 Notwithstanding any regulation regarding force majeure, as stated in this Contract, Everllence reserves the right to suspend at its sole discretion its performance at any time, in whole or in part, without incurring any liability, whenever such performance would be prevented by any applicable restrictive measures including sanctions, export or re-export controls (including but not limited to UN, EU and its member states, UK and U.S.-law) or would otherwise be inconsistent with such measures, or where an export license required by such regulations cannot be obtained. In the event the performance of the Contract is prevented due to the above reasons for a period of more than 180 days, Everllence or Buyer shall be entitled to terminate the Contract to the extent the performance is prevented. In the event an export license has been denied by the responsible authorities, Everllence or Buyer shall be entitled to terminate the denied part of the performance immediately. As consequence of such termination Buyer shall pay to Everllence the price of the supplies and services performed by Everllence under the Contract and any cost for unavoidable commitments incurred by Everllence with respect thereto. Any claims, rights and/or remedies of the Buyer with respect to such termination shall be excluded.

13.2 Everllence shall provide Buyer with a customs invoice and a packing list as standard shipping documents. Such documents are made out to the name of the Buyer. The content and layout of such documents are defined by Everllence and cannot be adjusted or amended. The provision of any further information or documents which might be required by Buyer for import purposes, such as but not limited to countries of origin, HS codes (numeric codes according to the "International Convention on the Harmonized System", issued by the World Customs Organization (WCO)), certificates of origin, declarations of preferential origin or other certificates shall be subject to an individual agreement. All costs for such additional information or documents shall be borne by the Buyer.

14 CUSTOMS CLEARANCE

If the agreed delivery address of the Goods is outside the territory of the European Union, Everllence will issue the export customs declaration and act as responsible exporter towards the customs authorities, unless otherwise agreed. If Buyer or any person acting on behalf of the Buyer picks up the Goods before export, Buyer shall present the Goods and the export customs declaration issued by Everllence at the responsible customs office of export and finalise the formal customs proceedings properly. If the agreed delivery address of the Goods is inside the territory of the European Union, Everllence will not issue an export customs declaration and will not act as responsible exporter for any further exports made by the Buyer, unless otherwise agreed. The same shall apply if the Goods are to be delivered on a vessel, which is currently located inside the territory of the European Union. If Buyer requires an export customs declaration by Everllence for delivery on such a vessel, this has to be agreed individually.

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15 ACCESS RIGHT AND USING RIGHT OF EQUIPMENT DATA BY EVERLLENCE

- 15.1 To provide the Goods/ Services/ repair work/ warranty under this Contract, Everllence shall have the right to access, register, read, copy, process and store the machine data of the relevant Goods (further referred to as "Data") remotely or by LAN, or otherwise (hereafter "Data Access/Processing"), at all times and without prior notice, to provide the service / repair work/ warranty under this Contract.
- 15.2 Therefore Everllence shall have the right to use (i) the Data received from the Goods for the Services/ repair work/ warranty under this Contract and (ii) the Data received during the performance of previous contracts to optimize Everllence's products, including but not limited to service, commissioning, benchmarking, technical optimization and improvements of existing products, development of new products and statistical purposes.
- 15.3 The Buyer authorises Everllence to share such Data with sub-contractors or cooperation partners of Everllence to the extent such sub-contractors or cooperation partners reasonably need access to Data in order to perform their services/ repair work and provided the sub-contractors or cooperation partners are under an obligation to Everllence to keep the Data confidential and to observe all data protection provisions which are applicable.
- 15.4 The Data will be stored, processed or used by Everllence within any one or more of the European Union, the European Economic Area and Great Britain, the jurisdiction in which the Data is provided to Everllence, and any other location as notified to the Buyer in writing from time to time.
- 15.5 Everllence shall keep the Data confidential and may only use and disclose it, as set out in this Contract.
- 15.6 If any Data constitutes "personal data" under the EU General Data Protection Regulation (GDPR), the Buyer will register, process, store and use that personal data in accordance with its Data Protection Notice (available at <https://www.everllence.com/dataprotection>) and in accordance with clause 15.1.
- 15.7 If this Contract is fulfilled, expired and/or terminated and the Buyer makes a request in writing, Everllence will anonymize all processed and stored Data before being used further by Everllence after fulfilment, expiration and/or termination of the Contract, except for details of the type of Goods and the serial number from which the Data had been collected.
- 15.8 For the avoidance of doubt, to the fullest extent permitted by law:
- Everllence' obligation supply of Goods/ Services/ repair work/ Warranty under this Contract shall be suspended if the Data Access/ Data Processing of the Goods is stopped/rejected by Buyer or if the Buyer has not provided details justifying this action that are satisfactory to Everllence acting reasonably. In such cases clause 11 (Suspension) shall apply. Any additional cost caused by this must be borne and reimbursed by Buyer to Everllence.
 - the right to Data Access / Processing does not imply any obligation upon Everllence to provide any monitoring of or any maintenance for the equipment.

16 GENERAL

- 16.1 Everllence and the Buyer shall only be entitled to assign or sub-contract any of its rights or the obligations under the Contract with the prior written consent of the other.
- 16.2 If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect. In so far as this is possible, the parties are committed to replace the invalid provision by another equivalent provision, with respect to the findings of the court, tribunal, administrative body or authority.
- 16.3 The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of New South Wales, and the laws

of the Commonwealth of Australia which are in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts..

- 16.4 If a party claims that a dispute has arisen under or in connection with this agreement (Dispute), that party must give notice of the Dispute (Dispute Notice) to the other party specifying the nature of the Dispute. Within 10 Business Days of the date of the Dispute Notice, the parties must meet to negotiate in good faith and seek to resolve the Dispute. If the Dispute is not resolved at this meeting or such other period agreed between the parties to the Dispute, the parties to the Dispute must refer the Dispute to mediation administered by the Australian Disputes Centre before having recourse to litigation. The parties shall keep confidential the existence of the Dispute or any information or document relating thereto or disclosed therein.
- 16.5 Subject to mandatory law, any claim of the Buyer under this Contract or otherwise arising by reason of or in connection with this Contract shall be forfeited, if Buyer fails to initiate mediation pursuant to clause 16.4 to enforce such rights and claims against Everllence within 6 months since the expiry of the warranty period as defined under clause 7.2.

17 DATA PROTECTION

The Parties undertake to observe all statutory provisions at all times, particularly those of the applicable data protection legislation, when processing the shared personal data (as defined by the respective applicable law).

The Buyer acknowledges to Everllence Privacy Notice accessible at <https://www.everllence.com/dataprotection>.

In the event that, upon conclusion of the Contract or in connection with the provision of the contractual services, one Party (hereinafter "Data Recipient") gains access to personal data for which the other Party is responsible (hereinafter "Data Transferee"), the following provisions shall apply, in addition to the applicable data protection legislation:

- Personal data shall be processed solely for the purpose of fulfilling the contractual obligations arising from the Contract ("purpose limitation").
- The Data Recipient shall ensure that its employees have access to personal data only to the extent necessary for the fulfillment of the contractual obligations arising from the Contract. All employees shall be obligated in writing to comply with the applicable data protection legislations. Proof of such compliance shall be provided to the Data Transferee upon request.
- The Data Recipient shall implement technical and organizational measures in accordance with the state of the art to ensure a level of protection for personal data appropriate to the risk and to safeguard such data permanently. Upon request, the Data Recipient shall provide evidence of the implementation of the specified technical and organizational measures.
- The transfer of personal data to Data Recipients located in third countries shall be permitted only in compliance with the conditions defined in the respective and applicable data protection legislations. The Data Transferee must have the applicable consents or lawful basis to effectuate the transfer of the data.
- The Data Recipient shall delete the data without undue delay once it is no longer required for the performance of the Contract, in accordance with the relevant statutory retention periods.
- In the event that personal data is processed by the Data Recipient on behalf of the Data Transferee, a corresponding Data Processing Agreement shall be concluded between the Parties.