

## Module 1 - Hardware Acquisition and Installation

Version 3.2

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#### [Use Guidelines](#)

This Module should be used when the Customer is buying and/or installing hardware such as computers, photocopiers and the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices such as printers, mouse and keyboard.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module]

## Agreed Terms and Interpretation

### AGREED TERMS

The terms and conditions included in this **Module 1** form part of the Customer Contract when the Parties state that the Hardware Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 6.
- 1.2 **Firmware** means fixed software code and/or data structures that internally control elements within the Hardware.
- 1.3 **Integration or Integrate** in respect of the Hardware means the implementation and setting to work of the Hardware with or within the Customer's existing hardware and software environment so that it is ready for use by the Customer and complies with the Contract Specifications and other requirements under the Customer Contract.
- 1.4 **Load and Performance Requirements** means, where applicable, that part of the Contract Specifications detailing the performance levels required and the anticipated memory requirements of the software application(s) that will be installed on the Hardware.
- 1.5 **Machine Code** includes any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware and any other code (all subject to any exclusions in the licence provided with it), delivered with the Hardware for the purpose of enabling the Hardware function as specified in its Contract Specifications. The term **Machine Code** excludes the operating system and any Licensed Software applications.
- 1.6 **Reseller as Facilitator** means a Reseller who uses the business model described in clause 3.1(a) to facilitate the supply of the Hardware and/or Machine Code to the Customer.
- 1.7 **Reseller with Pass Through Warranties** means a Reseller who uses the business model described in clause 3.1(b) to supply Hardware and/or Machine Code to the Customer.
- 1.8 **Spares Availability Period** means a period of three years from the AAD of the relevant Hardware, or such other period stated on the Module Order Form.

### INTERPRETATION

- 1.9 Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

## 2. Supply of Hardware

### DELIVERY

- 2.1 Unless otherwise specified in the Order Documents, the Contractor must:
  - (a) Install the Hardware in accordance with the Contract Specifications;
  - (b) demonstrate the use of the Hardware; and

- (c) Unless otherwise specified in the Order Documents, where the Contractor has Installed the Hardware the Contractor must by the AAD for the Hardware, remove or otherwise dispose of, at its own expense, all packing materials used for the delivery of the Hardware to the Site.

## RISK AND TITLE

- 2.2** Risk in each item of Hardware passes to the Customer upon delivery to the Site.
- 2.3** Unless agreed otherwise in the Order Documents, title to each item of Hardware passes to the Customer:
- (a) upon delivery to the Site; or
  - (b) where it is specified in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, upon the AAD of that item of Hardware.
- 2.4** If the Customer rejects an item of Hardware under clause 10.12(e) of the Customer Contract, title and risk in that item of Hardware reverts to the Contractor when that item of Hardware is delivered to a carrier for return.

## SOFTWARE

- 2.5** The Contractor grants to the Customer, for the period that the Customer has the lawful use of the Hardware, a non-exclusive, royalty free licence to use the Machine Code on the Hardware to enable the Hardware in which it is loaded to function in accordance with its Contract Specifications and only for the capacity and capability for which Customer has acquired the Contractor's written authorisation. The Customer must use Machine Code only as specified in this Customer Contract. The Customer must not:
- (a) otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Machine Code, except as the Contractor may authorise in the User Documentation or in writing to Customer;
  - (b) reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code unless expressly permitted by law;
  - (c) sublicense or assign the licence for Machine Code; or
  - (d) lease Machine Code or any copy of it.
- 2.6** Any Existing Material that comprises the operating system and any application Licensed Software that is pre-installed on the Hardware, or that is provided with the Hardware at the Commencement Date, is subject to the terms and conditions of Module 3.

## ANCILLARY SERVICES

- 2.7** Where any item of Hardware is provided to the Customer with additional capacity or features that can be activated by the Customer on a temporary or permanent basis and:
- (a) such additional capacity or features have not been paid for within the original Price; and
  - (b) such additional capacity or features to be set out in Annexure 3 to the Head Agreement (if any) or in the Order Documents,

the following terms apply where the Customer activates that additional capacity or features:

- (c) where the Customer first activates any of the additional capacity or features the Customer will be deemed to have permanently activated that additional capacity or feature and may use that additional capacity or feature from that date; and
  - (d) the Customer must pay to the Contractor (subject to receiving a Correctly Rendered Invoice from the Contractor) an addition to the Contract Price, plus any additional Price in respect of Hardware Maintenance and Support Services relating to the additional capacity or feature activated. These additions to the Contract Price must be specified in the Order Documents. If no such addition is specified, the Customer will not be liable for any additional Price or other charge.
- 2.8** The Parties may agree that an item of Hardware is to be used for a restricted purpose (e.g. as a test machine only) in which case the Parties will agree the scope of the restricted use and the Price for the Hardware that can be used for that restricted purpose, and such details must be set out on the Module Order Form.
- 2.9** The Contractor must Integrate the Hardware and provide training to the Customer to the extent specified in the Order Documents.

#### BACK UPS

- 2.10** Unless the Contractor has an obligation under another Module to take back ups of data that is loaded into a Deliverable, the Customer must take and maintain adequate backups of any data that is loaded into any Deliverable so that there is no loss of data in the event that any failure of any Deliverable causes damage to, or loss of, any data.

#### EXPORT

- 2.11** Export laws and regulations of Australia and the United States may apply to the Products under this Module. The Customer agrees:
- (a) that such export laws govern the use of the Products (including technical data related to them) and any other Deliverables provided under this Customer Contract;
  - (b) to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations); and
  - (c) that no data, information, Deliverable and/or materials resulting from this Customer Contract (or any direct product of any of them) will be:
    - (i) exported, directly or indirectly, in breach of these export laws; or
    - (ii) used for any purpose prohibited by these export laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

### 3. Acquisition through a Reseller

- 3.1** Where it is specified on the Order Documents that the Hardware or Machine Code is to be supplied via a Contractor that is a Reseller, the provisions of this clause 3 apply, and the Customer and the Contractor must agree on the Module Order Form which of the business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Hardware and/or Machine Code:
- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Hardware and/or Machine Code from the original equipment provider or its authorised distributor to the Customer, in which case:

- (i) the Contractor will procure that the original equipment provider or its authorised distributor enters into a contract directly with the Customer for the supply of the Hardware and/or the licence for the Machine Code, and the provisions of the Customer Contract that relate to the supply of the Hardware and/or Machine Code, including provisions in this Customer Contract relating to passing of title, intellectual property rights and the features, capabilities, performance or other characteristics of the Hardware and/or Machine Code and the other provisions of this Module (other than clauses 2.2 to 2.8 ) do not apply. The terms of the contract between the original equipment provider or its authorised distributor and the Customer for the supply of the Hardware and/or the licence for the Machine Code will be attached to the Customer Contract and will be deemed accepted by the Customer when the Customer enters into the Customer Contract;
  - (ii) the Customer will pay the Contract Price for the Hardware and/or the licence for the Machine Code to the Contractor, and the Contractor shall pay the amount agreed between the Contractor and the original equipment provider or its authorised distributor for the Hardware and/or Machine Code; and
  - (iii) the Contractor will co-ordinate any warranty claim that is reported by the Customer to the Contractor and must use best efforts to ensure that all benefits of the warranty to the Customer are utilised to the benefit of the Customer, and this may include returning faulty equipment to the third party for repair under warranty rather than repairing the maintained Hardware and/or Machine Code, however the Contractor is not liable to the Customer for the supply of the Hardware and/or Machine Code in any way, including the features, capabilities, performance or other characteristics of the Hardware and/or Machine Code; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Hardware and/or Machine Code to the Customer on the terms and conditions of the Customer Contract, except that:
- (i) clause 19.1(c) of the Customer Contract does not apply;
  - (ii) the warranties or guarantees that are provided under this Module are limited to any warranties or guarantees that cannot be excluded by law and any warranties that the original equipment provider or its authorised distributor permits the Contractor to assign to the Contractor's customers;
  - (iii) clause 2.4 of this Module does not apply and the Contractor warrants that title in the Hardware passes to the Customer on the date that the Reseller obtains title to the Hardware from its supplier, provided that such date is no later than 60 days after AAD of that Hardware (subject to the Contractor receiving payment from the Customer prior to 45 days after the AAD of the Hardware); and
  - (iv) the Contractor must use best efforts to ensure that all benefits of the warranty to the Customer for that Hardware are utilised to the benefit of the Customer; and this may include returning faulty equipment to the original equipment manufacturer or authorised distributor for repair under warranty rather than repairing the maintained Hardware.
- 3.2** The Customer warrants to the Contractor that the Customer and all of the Customer's end users of the Hardware and/or the Machine Code will comply with the terms of any contract and/or licence between the Customer and the original equipment provider or its authorised distributor.
- 3.3** The Contractor must provide any value added services that are set out in the Order Documents.

## 4. Availability of Hardware and Spares

- 4.1** The Contractor warrants that, for the Spares Availability Period it will, or it will procure that its supplier or the manufacturer will, offer to:
- (a) continue to supply the Hardware and any associated Machine Code (including replacements, upgrades or attachments provided by the Contractor); or
  - (b) supply appropriate substitutes for the Hardware if for any reason it is no longer available.
- 4.2** The Contractor warrants that, for the Spares Availability Period, it will, or it will procure that its supplier or the manufacturer will, offer to:
- (a) continue to provide support and spare parts for the Hardware and any Machine Code, or any replacement, upgrade or substitute for the Hardware;
  - (b) if specified in the Order Documents, provide training and such other assistance reasonably required by the Customer to enable the Customer to continue to use and maintain the Hardware; and
  - (c) maintain or ensure that there is sufficient stock of Hardware parts to enable any replacement, upgrade or substitute to be promptly made available to the Customer.
- 4.3** If the Contractor intends to cease supplying spare parts for the Hardware it must give the Customer at least 6 months' notice prior to the end of the Spares Availability Period of its intention.

## 5. Specific Warranties

### SCOPE

- 5.1** The Contractor warrants that the Hardware and any Machine Code, during the Warranty Period, subject to any Exception, will, in all material respects:
- (a) meet the requirements of the Contract Specifications and any other requirements under the Customer Contract, including any Load and Performance Requirements;
  - (b) be free from defects or omissions in materials, workmanship, design and performance;
  - (c) be compatible and interoperable with Customer's hardware and software environment as set out in the Module Order Form;
  - (d) be compatible and interoperable with the operating system and any Licensed Software that is set out on the Module Order Form and is an application that was pre-installed on the Hardware or was provided with the Hardware at the Commencement Date; and
  - (e) be fully scalable to accommodate the Customer's changing requirements to the extent set out on the Module Order Form.
- 5.2** The Contractor warrants that the User Documentation that is to be provided by the Contractor at the time of delivery of the Hardware, will, subject to the Exceptions:
- (a) include material the Contractor usually makes available free to its other customers; and
  - (b) provide adequate instructions on how to enable an appropriately skilled IT person to operate and use the Hardware without reference to the Contractor.

- 5.3** If the Customer provides the Contractor with Notice in Writing of any Defect or suspected Defect in the Hardware, Machine Code or User Documentation within the Warranty Period, then the Contractor shall:
- (a) inspect the Hardware and/or Machine Code and, as determined by the Contractor, replace or repair the Hardware, Machine Code or its components after receiving the Notice in Writing from the Customer. This must be completed within any period agreed in a Service Level Agreement, or if no Service Level Agreement is agreed, it must be done in a reasonable time, taking into account the impact on the Customer's operations; or
  - (b) promptly rectify any User Documentation.
- 5.4** Where the Contractor replaces the Hardware or parts of the Hardware, the Contractor warrants that:
- (a) the replacement hardware or parts become the property of the Customer on installation;
  - (b) the parts will be newly manufactured (or will be warranted as if they are new); and
  - (c) the replacement Hardware or parts are provided with same warranties that apply to the Hardware for the remainder of the Warranty Period of the Hardware.
- 5.5** If the Customer requires the Contractor to deal with any replaced parts in any particular way, e.g. remove Confidential Information from the replaced part and/or dispose of the replaced part, the Parties may agree the scope and Price for such services, and such services must be documented using a Change Request.
- 5.6** The Customer must provide reasonable assistance in remedying any Defect, including installing any 'user installable parts' (as defined by the Contractor) supplied by the Contractor and running any diagnostic tests or software. Where the Contractor requires remote access to the Deliverable to provide warranty services the Customer must provide that access, subject to the Contractor complying with the Customer security and privacy policies set out in Item 8 of the Head Agreement Details and Item 30 of the General Order Form. If the Customer does not permit such access then the Customer must pay any additional costs incurred by the Contractor in attending the Customer's Site to provide the warranty services, such costs to be calculated using the rates set out in the Customer Contract, or if none are stated, using the Contractor's then current commercial rates.
- 5.7** If the Contractor is unable to rectify a Defect in accordance with the timeframes in clause 5.3, the Customer may using a third party who has been authorised by the supplier or manufacturer to be an authorised repairer of the Hardware correct any Defect. In this case:
- (a) the Contractor must provide the authorised third party whatever assistance that may reasonably be required to rectify the Defect; and
  - (b) the Contractor is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Customer Contract.
- 5.8** Where the Customer is seeking to rely on clause 5.7 because the Contractor is unable to rectify a Defect in accordance with the timeframes in clause 5.3, and there are no authorised third party repairers, then the Customer may arrange for another third party to correct the Defect. In this case:
- (a) the Customer must ensure that the third party complies with the manufacturer's instructions and any User Documentation in making any repair;
  - (b) the Contractor's obligations under clause 5.3 are not affected by the use of the third party, and the Contractor is not liable for any loss, damage or expense incurred or



suffered by the Customer that is caused by the third party, including damage to the Hardware or any act or omission that causes the need for subsequent repair;

- (c) the Contractor must provide the third party whatever assistance that may reasonably be required to rectify the Defect; and
- (d) the Contractor is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Customer Contract;

- 5.9** The Contractor must pay for all costs incidental to the discharge of its warranty obligations including the provision of packing, freighting, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts' (as determined by the Contractor).
- 5.10** The Contractor warrants that components and materials shall not in normal operating conditions emit fumes, liquids, electromagnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.
- 5.11** If the Customer rejects the Hardware under clause 10.12(e) of the Customer Contract or the Contractor requires the Hardware to be returned to the Contractor in order to remedy a Defect, the Contractor may determine the method of return and the carrier, and in any event is liable to pay the expenses for the return and shipment of repaired or any replacement Hardware.

## 6. Exceptions

- 6.1** The Contractor is not liable for any breach of the Customer Contract which arises as a result of:
- (a) fair wear and tear;
  - (b) not implementing any mandatory engineering changes as specified by the Contractor;
  - (c) damage arising from the re-installation, moving, relocation or decommissioning or re-commissioning of the Hardware by a person other than the Contractor or its authorised representative;
  - (d) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Contractor or an authorised third party repairer appointed under clause 5.7. To the extent that the Contractor permits a repair to be conducted by the Customer or any part is a 'user installable part' (as defined by the Contractor), then where that repair is conducted (or part is installed) in accordance with the Contractor's instructions this shall not affect any warranty;
  - (e) damage arising from the act, error, fault, neglect, misuse or omission of the Customer;
  - (f) damage caused by the failure of electrical power (other than power from the internal battery of the Hardware), air conditioning, humidity control or any environmental factor;
  - (g) damage caused by the operation of the Hardware other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the manufacturer or the Contractor;
  - (h) any Virus, denial of service attack or other malicious act that adversely affects the Hardware or any software installed on it or connected to it, except to the extent that:
    - (i) the attack or malicious act is an attack or malicious act of the Contractor; or



- (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
  - (i) use of consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor;
  - (j) improper use or mismanagement by the Customer; or
  - (k) a Force Majeure Event.
- 6.2** Where the Contractor has been requested to provide any warranty services and the item that was requested to be remedied is determined not to be a Defect then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.
- 6.3** The Contractor expressly excludes any warranty that the Hardware will operate with any consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor.