

The terms and conditions set out below will apply to any Goods and Services provided by Texcel Pty Ltd (Texcel) (Terms & Conditions).

1. Definitions

- 1.1 **Customer** means any customer of Texcel as described on any quotation or other form or any person acting with the authority of the Customer;
- 1.2 **Goods** mean any Goods supplied by Texcel to the Customer as described on any quotation, invoice, price list or any other form provided by Texcel to the Customer;
- 1.3 **parties** mean the Customer and Texcel and **party** means any of them;
- 1.4 **PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended and **PPSR** means the Personal Property Securities Register;
- 1.5 **Price** means the price payable for the Goods and/or Services as set out in any quotation or price list or as agreed between Texcel and the Customer in accordance with these Terms & Conditions; and
- 1.6 **Services** means all services supplied by Texcel to the Customer as described in any quotation, invoice, price list or any other forms provided by Texcel to the Customer.

2. Acceptance

- 2.1 Any instructions received by Texcel from the Customer for the supply of Goods or Services and/or the Customer's acceptance of Goods or Services supplied by Texcel will constitute acceptance of the Terms & Conditions.
- 2.2 Where more than one (1) Customer has entered into these Terms & Conditions, the Customers will be jointly and severally liable for all payments of the Price and any other monies payable by the Customer pursuant to the Terms & Conditions.
- 2.3 Upon acceptance of these Terms & Conditions by the Customer, the Terms & Conditions are binding and can only be amended with the written consent of Texcel.
- 2.4 Goods and Services are supplied by Texcel only on these Terms & Conditions to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these Terms & Conditions.

3. Quotations and Orders

- 3.1 Any quotation provided by Texcel is not an offer or obligation to sell but an invitation to treat only.
- 3.2 A quotation is open for acceptance within the period stated in the quotation or within thirty (30) days of the date of the quotation if no period is stated.
- 3.3 Texcel reserves the right to accept or reject any order it receives. Until Texcel accepts in writing any order submitted, Texcel is not obliged to provide any Goods or Services.
- 3.4 If an order is accepted by Texcel for Goods or Services, and the Customer cancels the order after the date that the order was accepted by Texcel, the Customer will forfeit any deposit paid for that order.
- 3.5 If the Customer defaults under these Terms & Conditions, Texcel may cancel, suspend or vary the terms and conditions of any incomplete order that has been accepted by Texcel without notice to the Customer and without being liable to the Customer.
- 3.6 Texcel is not responsible to the Customer for a breach of its obligation to supply the Goods or Services pursuant to an order Texcel has accepted, or for any delay in delivery or supply, if the failure or delay is caused by matters beyond the reasonable control of Texcel (including but not limited to acts of God, acts of government, pandemic, war or other hostility, national or international disaster, fire, explosion, power failure, equipment failure, strike or lockout, inability to obtain necessary supplies and any other force majeure occurrence).

4. Price and Payment

- 4.1 At Texcel's sole discretion, the Price will be either:
 - 4.1.1 as indicated on invoices provided by Texcel to the Customer in respect of Goods or Services supplied; or
 - 4.1.2 Texcel's price at the date of delivery of the Goods or the date of completion of the Services according to Texcel's current price list; or
 - 4.1.3 Texcel's quoted Price on its quotation.
- 4.2 Texcel may, in its sole discretion, require payment by the Customer of a non-refundable deposit prior to the supply or delivery of the Goods or Services.
- 4.3 Texcel may, in its sole discretion, require payment of the Price by the Customer either prior to or on delivery of the Goods or supply of the Services.
- 4.4 Time for payment for the Goods or Services will be of the essence and will be as stated on the invoice for the supply of the Goods or Services by Texcel to the Customer. If no time is stated on an invoice, payment will be strictly seven (7) days following the date of invoice.
- 4.5 Where there is a delay in Texcel the supply of Goods or Services, Texcel is entitled to request a progress payment from the Customer on completion of the part of the Goods or Services supplied.
- 4.6 Payment of the Price must be made by cash, bank cheque, credit card, direct credit, or by any other method as agreed to between the Customer and Texcel.
- 4.7 Unless otherwise stated, GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.

5. Services

- 5.1 In the event that Texcel is engaged to provide Services to the Customer, the following provisions apply.
- 5.2 If Texcel is required to attend the Customer's premises or a third party's site (**Site**) in order to perform the Services, the Customer must ensure that the Site is accessible, adequate, suitable and safe having regard to the nature of the Services to be performed on the Site.
- 5.3 If the Customer fails to comply with clause 5.2, Texcel may either refuse to perform the Services or change the scope and Price of the Services, in addition to any other remedy Texcel may have at law or in equity.
- 5.4 The Customer may by notice in writing to Texcel request that Texcel change the scope of the Services.
- 5.5 Unless it is not reasonably practicable for Texcel to do so, Texcel will give effect to any change to the Services requested by the Customer which is within the general scope of the Services.
- 5.6 Where a change or variation to the Services is requested by the Customer or required by Texcel, Texcel will be entitled to an adjustment of the Price by a reasonable amount reflecting the increased costs of performing the Services and a reasonable extension of time for providing the Services.
- 5.7 Any variation must be authorised by Texcel in writing by means of a variation certificate (in Texcel's current form) and signed by all parties.

6. Goods

- 6.1 In the event that Texcel supplies Goods to the Customer, the following provisions apply.
- 6.2 Delivery of the Goods will take place when the Customer takes possession of the Goods, either by

collecting the Goods from Texcel's business premises or by delivery of the Goods to the Customer's nominated address (whatever is agreed in writing between Texcel and the Customer). In the event that the Customer is unable to take delivery of the Goods as arranged, Texcel will be entitled to charge a reasonable fee for redelivery.

- 6.3 The customer shall be responsible for freight charges to and from the nearest Texcel office (unless stated otherwise).
- 6.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms & Conditions.
- 6.5 Texcel may, in its sole discretion, deliver the Goods by separate instalments.
- 6.6 Where the Customer expressly requests Texcel to deliver the Goods to an unattended location, such Goods will be left at the nominated location at the Customer's sole risk.
- 6.7 The failure of Texcel to deliver the Goods or any of the Goods will not entitle either party to treat these Terms & Conditions as repudiated.
- 6.8 Texcel will not be liable for any loss or damage due to failure by Texcel to deliver any of the Goods promptly or at all as a result of circumstances beyond the control of Texcel.

7. Title

- 7.1 Ownership of any Goods will not pass until the Customer has paid Texcel all amounts owing for the Goods and the Customer has met all other obligations due by the Customer to Texcel in respect of all contracts or arrangements between Texcel and the Customer.
- 7.2 Texcel's title or rights in the Goods will continue until any form of payment by a Customer has been received, honoured, cleared or acknowledged by Texcel.
- 7.3 The parties acknowledge and agree as follows:
 - 7.3.1 where practicable the Goods will be kept separate and identifiable until Texcel has received payment and all other obligations of the Customer are met;
 - 7.3.2 until such time as ownership of the Goods passes from Texcel to the Customer, Texcel may give notice in writing to the Customer to return the Goods or any of them to Texcel. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods will cease.

8. Risk

- 8.1 Notwithstanding clause 6, all risk in the Goods passes to the Customer on either collection from Texcel's business premises or on delivery of the Goods (whichever is agreed between Texcel and Customer in writing), in accordance with these Terms & Conditions.
- 8.2 If any of the Goods are damaged or destroyed following collection or delivery (whichever is applicable) but prior to title passing to the Customer, Texcel is entitled to receive all insurance proceeds payable for the Goods.
- 8.3 The production of these Terms & Conditions by Texcel is sufficient evidence of Texcel's rights to receive the insurance proceeds without the need for any person dealing with Texcel to make further enquiries.

9. PPSA

- 9.1 In this clause: **financing statement**, **financing change statement** and **security interest** have the meaning given to it by the PPSA; **security agreement** means the security agreement under the PPSA created between the Customer and Texcel by these Terms & Conditions.
- 9.2 The Customer acknowledges and agrees that these Terms & Conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods previously supplied and to be supplied in the future by Texcel to the Customer and a right to any proceeds in the sale of such Goods.
- 9.3 The Customer undertakes to:
 - 9.3.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which **Texcel** may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest;
 - (b) register any other document required to be registered by the PPSA; or
 - (c) correct a defect in any statement;
 - 9.3.2 indemnify, and upon demand reimburse, Texcel for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
 - 9.3.3 not register a financing change statement in respect of a security interest without the prior written consent of Texcel;
 - 9.3.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Texcel; and
 - 9.3.5 immediately advise Texcel of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Texcel and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms & Conditions.
- 9.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA and the Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.6 Unless otherwise agreed to in writing by Texcel, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.7 The Customer agrees to unconditionally ratify any actions taken by Texcel under this clause.
- 9.8 The Customer must not register a security interest over Texcel without its prior written consent.

10. Australian Consumer Law

- 10.1 Subject to Texcel's statutory obligations under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**) the following provisions apply.
- 10.2 Texcel's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the ACL is limited to:
 - 10.2.1 in the case of Goods: any one (1) or more of the following: the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or of acquiring equivalent goods; the payment of the cost of having the Goods repaired; and
 - 10.2.2 in the case of Services: the supplying of the services again; or the payment of the cost of having the Services supplied again.
- 10.3 Subject to Texcel's statutory obligations under the ACL and except as provided in these Terms & Conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
- 10.4 Texcel is not liable to the Customer for any physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of any Good or Service or arising out of negligence or in any way whatsoever.
- 10.5 Texcel's liability under section 274 of the ACL is expressly limited to a liability to pay the Customer an amount equal to: the cost of replacing the Goods; the cost of obtaining equivalent Goods; or the

- cost of having the Goods repaired, whichever is the lowest amount.
- 10.6 Texcel acknowledges that:
- 10.6.1 Texcel's Goods come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 10.6.2 Texcel's Services come with guarantees that cannot be excluded under the ACL. For major failures with the Service, the Customer is entitled:
- to cancel the Service provided by Texcel; and
 - to a refund for the unused portion, or to compensation for its reduced value.
- The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel the Services provided by Texcel and obtain a refund for the unused portion of the contract.
- 11. Warranties**
- 11.1 To the extent permitted by law, Texcel does not warrant the following:
- 11.1.1 any of the Goods that are not manufactured by Texcel, and in such case the Customer will only have the benefit of the warranty (if any) of the manufacturer of those Goods which forms part of the contract between Texcel and the manufacturer; or
- 11.1.2 normal wear and tear in the Goods;
- 11.1.3 defects, loss or damage caused directly or indirectly by or as a result of:
- any defect, deterioration, weakening or collapse of the structure to which the Goods is installed occurring at any time;
 - any damage to or deterioration in the condition of the Goods occurring in transit by the Customer's nominated or appointed carrier or occurring after delivery and prior to installation of the Goods;
 - any additional defect damage or deterioration arising from or attributable to the installation of the Goods after it is known to be defective;
- 11.1.4 defects or deterioration which, in the opinion of Texcel, have been caused by careless or improper handling, negligence, misuse, care or maintenance instructions, alterations or repairs carried out by anyone other than Texcel's authorised representatives, or by fair wear and tear.
- 11.2 The Customer acknowledges and agrees that they have had the opportunity to review the variety of Goods and Services offered by Texcel together with their specifications and quality and that unless specifically stated otherwise, that the Good and Services are fit for use. Texcel will not be liable to the Customer in any way for any costs, damage or loss of any kind whatsoever (including, without limitation, liability for direct, indirect, special or consequential loss or damage) incurred or sustained by the Customer or any third party arising from or in connection with the Goods and Services and any damage caused.
- 11.3 Texcel does not have to repair or replace a Good under a warranty of Texcel if the Good has been modified, disassembled, misused, improperly or inappropriately installed, operated or repaired, abused, damaged or not maintained in accordance with Texcel's and/or manufacturer's instructions.
- 11.4 For the purpose of making any claim under this clause, the Customer must:
- immediately upon becoming aware of circumstances giving rise to a claim, notify Texcel in writing setting out full details of the claim;
 - provide Texcel with proof of purchase of the Goods in relation to its claim; and
 - allow Texcel, its employees and/or agents full and free access to the Goods in relation to which the claim is made and to the place where the Goods are located for the purpose of conducting any inspection and tests that Texcel may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- 11.5 Where a Good or any part of a Good is not manufactured by Texcel, Texcel will use all reasonable endeavours to assign to the Customer the benefit of any warranty in respect of that part of the Good.
- 11.6 Any warranty of Texcel cannot be assigned or transferred to any third party.
- 11.7 This clause must be read in conjunction with any warranty statement provide by Texcel in respect of the Goods.
- 12. Default**
- 12.1 Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at a rate of fifteen percent (15%) per annum (and at Texcel's sole discretion such interest will compound monthly) after as well as before any judgment.
- 12.2 In the event that the Customer's payment is dishonoured for any reason, the Customer will be liable for any dishonour fees incurred by Texcel.
- 12.3 If the Customer defaults in payment of any invoice when due, the Customer will indemnify Texcel from and against all costs and disbursements incurred by Texcel in pursuing the debt including legal costs on a solicitor and own client basis and Texcel's collection agency costs (if permissible by law). If any account remains overdue after seven (7) days, then an amount of the greater of fifty dollars (\$50.00) or ten percent (10%) of the amount overdue (up to a maximum amount of \$250.00) may be levied for administration fees which sum shall become immediately due and payable by the Customer.
- 12.4 Without prejudice to any other remedies Texcel may have, if at any time the Customer is in breach of any obligation (including those relating to payment) pursuant to these Terms & Conditions Texcel may suspend or terminate the supply of Goods or Services to the Customer and any of its other obligations under the Terms & Conditions, resell or dispose of the Goods. Texcel will not be liable to the Customer for any loss or damage the Customer suffers because Texcel has exercised its rights under this clause.
- 12.5 Without prejudice to Texcel's other remedies at law, Texcel will be entitled to cancel all or any part of any order of the Customer which remains unfulfilled (in respect of the Supply of Goods and/or Services) and all amounts owing to Texcel will, whether or not due for payment, become immediately payable in the event that:
- any money payable by the Customer to Texcel becomes overdue, or in Texcel's opinion, the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 12.6 In the event that Texcel retains possession or control of the Goods, payment of the Price is due to Texcel and Texcel has made demand in writing of the Customer for payment of the Price in terms of these Terms & Conditions and Texcel has not received the Price of the Goods, then, whether title in the Goods has passed to the Customer or has remained with Texcel, Texcel may dispose of the Goods and may claim from the Customer the loss to Texcel on such disposal.
- 13. Cancellation**
- 13.1 Texcel may cancel:
- any order to which these Terms & Conditions apply; or
 - delivery of Goods; or
 - supply of Services.
- at any time before the Goods are delivered or the Services are supplied by giving written notice to the Customer. On giving such notice Texcel will repay to the Customer any sums paid in respect of the Price. Texcel will not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods or supply of Services, the Customer may be liable for any loss incurred by Texcel (including, but not limited to, any loss of profits) up to the time of cancellation, which the parties agree shall be not less than twenty-five percent (25%) of the quoted Price.
- 14. Privacy**
- The Customer acknowledges and agrees that our Privacy Policy (as amended from time to time) is as set out on Texcel's website and the Customer has familiarised itself with the terms of the Privacy Policy.
- 15. General**
- 15.1 If any provision of these Terms & Conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 15.2 If any provisions of these Terms & Conditions are inconsistent with the PPSA, the PPSA will prevail to the extent of that inconsistency.
- 15.3 These Terms & Conditions and any contract to which they apply will be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 15.4 To the extent permitted by law:
- Texcel will be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Texcel of these Terms & Conditions;
 - In the event of any breach of this contract by Texcel the remedies of the Customer will be limited to damages which under no circumstances will exceed the Price of the Goods or Services.
- 15.5 The Customer will not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Texcel nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.6 Texcel may license or sub-contract all or any part of its rights and obligations.
- 15.7 The Customer agrees that Texcel may review these Terms & Conditions at any time. If, following any such review, there is to be any change to these Terms & Conditions, then that change will take effect from the date on which Texcel notifies the Customer of such change. The Customer will be under no obligation to accept such changes except where Texcel supplies further Goods or Services to the Customer and the Customer accepts such Goods or Services.
- 15.8 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond their reasonable control.
- 15.9 The failure by Texcel to enforce any provision of these Terms & Conditions will not be treated as a waiver of that provision, nor will it affect Texcel's right to subsequently enforce that provision.
- 15.10 Where Texcel has designed or drawn or provided designs and/or specifications of Goods or Services for the Customer, then the copyright in those designs and drawings shall remain vested in Texcel, and shall only be used by the Customer with Texcel's consent. Texcel may use any documents, designs, drawings for Goods or Services created by Texcel for the purposes of advertising or marketing by Texcel.
- 16. Special Conditions**
- In the event of any inconsistency between these Special Conditions and the standard terms above, these Special Conditions will prevail to the extent of the inconsistency.
- Nexus by Texcel and Data by Texcel**
- 16.1 In the event that Texcel is engaged to provide Nexus by Texcel and/or Data by Texcel Services to the Customer, the following provisions apply:
- Either party may terminate this agreement for convenience as follows:
 - Monthly Engagement - by giving the other party not less than thirty (30) days notice in writing;
 - Other Engagement - by giving the other party not less than ninety (90) days notice in writing.
 - In the event that the Customer requires the Nexus by Texcel and/or Data by Texcel Services to be paused (for example during a planned shut down or during the festive season), the Customer must provide not less than fourteen (14) days notice to Texcel prior to the proposed commencement of the pause of the Nexus by Texcel and/or Data by Texcel Services. Nexus by Texcel and/or Data by Texcel Services may only be paused by the Customer for a maximum of four (4) weeks in any twelve (12) month period unless otherwise agreed in writing
- Data Service by Texcel**
- 16.2 In the event that Texcel is engaged to provide Data by Texcel Services to the Customer, the following provisions apply:
- Data services may be available for Texcel's monitors;
 - The standard data service requires Texcel have physical access to the monitor for downloading purposes. The quoted price assumes the monitor is brought to Texcel. If Texcel staff need to travel to site to access the monitor, additional charges will apply;
 - The standard data service presents the data either as a standard compliance report, or as a spreadsheet of the logline events;
 - The Customer must:
 - for the standard data service - provide access to the monitor(s) as necessary for Texcel personnel;
 - for the premium data service - where necessary, provide sufficient details to allow Texcel personnel to communicate remotely with the monitor(s);
 - Texcel will use best endeavours to provide, but does not guarantee, continuous or fault free service and/or server availability.
 - Texcel cannot be held responsible for the quality, delivery or validity of the data collected;
 - Texcel produces continuous backups of the Customer's data. These backups are stored in Texcel's primary data centre and mirrored offsite to a cloud storage facility.
 - The Customer acknowledges and agrees that Texcel may invoice the Customer, at its discretion, for any part-use of any data Services.

Nexus by Texcel

16.3 In the event that Texcel is engaged to provide Nexus by Texcel Services to the Customer, the following provisions apply:

- 16.3.1 Texcel will use best endeavours to provide, but does not guarantee, continuous or fault free service and/or server availability.
- 16.3.2 Changes to the Customer's details must be notified by email to team@texcel.com.au
- 16.3.3 Texcel owns all existing intellectual property rights that are used in performing Nexus by Texcel and/or creating the deliverables. Subject to the Customer's compliance with its obligations under these Terms & Condition, Texcel grants to the Customer a non-exclusive, revocable licence to use Texcel's intellectual property if it is incorporated in any deliverable – but only to the extent necessary to use that deliverable, and the Customer may only use Texcel's intellectual property internally for the purposes of the Customer's business.
- 16.3.4 Texcel cannot guarantee against an attempted (or successful) security compromise on Nexus by Texcel. The Customer's Nexus by Texcel account is protected by incorporating the use of backup systems, firewalls, intrusion prevention systems and the provision of disaster prevention and recovery systems.
- 16.3.5 In the event of a system failure for whatever reason, Texcel will not be responsible for any damages or consequential losses and/or injury incurred by the Customer. Whilst Texcel will use reasonable care to ensure the security of its systems, Texcel will not be responsible for loss of data or service outage.
- 16.3.6 The Customer agrees that Texcel are not responsible for any data loss in any event.
- 16.3.7 Texcel produces continuous backups of the Customer's data. These backups are stored in Texcel's primary data centre and mirrored offsite to a cloud storage facility.
- 16.3.8 Texcel will provide reasonable support in relation to a Nexus by Texcel issue. However, the Customer agrees that Texcel is not responsible for providing support for any computer issues of the Customer.
- 16.3.9 The Customer is responsible for maintaining the privacy of their account details including username and password.
- 16.3.10 The Customer is responsible for protecting and securing the Customer's password and for any authorised or unauthorised use of the Customer's password. The Customer shall not use or permit anyone to use the Service to access other accounts, systems or networks without authorisation. Texcel will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activities.
- 16.3.11 Texcel reserves the right suspend or cancel an account or service where malicious activity is suspected.

Data

16.4 In the event that Texcel is engaged to provide Services in relation to data of the Customer, the following provisions apply:

- 16.4.1 Where a monitor location has been changed, the environment where the monitor is located has changed or the signal strength of the monitor has been effected by an external factor and the Customer advises that a monitor has been re-installed and activated, Texcel will test the remote connection upon request by the Customer.
- 16.4.2 If no prior configuration settings are provided to Texcel, factory default settings will be installed.
- 16.4.3 Formatted reports will be emailed to the point of contact only unless otherwise advised.
- 16.4.4 Data will be retained and archived for five (5) years. If the Customer requires its data to be stored for a longer period, the Customer must contact Texcel and longer terms can be arranged. Additional fees may be charged by Texcel to the Customer for this extended storage term.
- 16.4.5 The Customer must advise Texcel:
 - (a) when and where the monitor has been re-located and activated.
 - (b) of the new configuration settings required and the list of email recipients for the data.
- 16.4.6 Texcel cannot be held responsible for the quality or validity of the data collected.

Setup / Field Installation

16.5 In the event that Texcel is engaged to complete a setup and/or field installation (in respect of any sale or rental of Goods or Services associated with Nexus by Texcel and/or Data by Texcel) at the Customer's premises or any nominated third-party site, the following provisions apply:

- 16.5.1 Texcel will use reasonable endeavours to meet the time frames agreed for completion of the setup/field installation of the Customer's required system, monitors, sensors or program by Texcel but will not be responsible for any delays outside of the control of Texcel. The Customer acknowledges that Texcel's ability to meet any agreed time frames may depend on the Customer providing Texcel with any required information, participating promptly in reviewing material Texcel has produced or otherwise providing Texcel with inputs Texcel needs from the Customer.
- 16.5.2 Where onsite installation is required, Texcel will use reasonable endeavours to comply with the Customer's or any third party's reasonable on-site policies and procedures (where applicable) and where such policies are notified to Texcel in advance. Texcel reserves the right to increase its Price where any policy causes Texcel to incur additional costs.
- 16.5.3 Texcel will perform the setup/field installation with all due care and skill.
- 16.5.4 The Customer must notify us promptly of any known disruptions to the performance of Texcel's equipment, such as relocation of the equipment or physical damage to the equipment.

Rental

16.6 In the event that Texcel rents equipment to the Customer, the following provisions apply:

- 16.6.1 Texcel retains all right, title and interest in any equipment rented to the Customer and, to the extent applicable, the provisions of clauses 7, 8 and 9 of these Terms & Conditions apply as if the equipment rented are Goods.
- 16.6.2 Any monitor rented by Texcel will carry a valid Calibration Certificate at the date of the rental.
- 16.6.3 Where the equipment specified by the Customer is not available at the time of the rental, Texcel may supply a piece of equipment of higher specifications that will perform the task required by the Customer.
- 16.6.4 Texcel will repair or replace equipment that may become defective during the rental period through no fault of the Customer.
- 16.6.5 If the Customer's rental equipment includes a modem option, Texcel is unable to guarantee that it will function in the Customer's location.
- 16.6.6 SIM cards provided with a modem option are only valid for use within Australia or New Zealand.
- 16.6.7 The rental period commences on the day the equipment leaves the Texcel premises and terminates the day on which it returns.
- 16.6.8 The Customer will be responsible for the freight costs of the equipment to and from Texcel's

premises, including but not limited to any fees, duties and taxes where the monitor is returned from an overseas location.

- 16.6.9 The Customer is responsible for the safekeeping of the equipment. Where equipment or accessories are damaged or lost, the rental charges will continue until the loss has been rectified. Where this rectification requires repairs or replacement by Texcel, the Customer will be charged for this rectification. A separate purchase order may be necessary to cover these costs (if they are applicable).
- 16.6.10 The Customer must return the rented equipment to Texcel at the conclusion of the rental period.
- 16.6.11 Subject to state of the equipment when it is returned, Texcel may impose a reasonable cleaning charge which shall be payable by the Customer upon receipt of the invoice from Texcel.
- 16.6.12 The Customer shall not alter or modify the equipment in any way without prior written consent from Texcel (which may be given or withheld at Texcel's sole discretion).
- 16.6.13 Texcel will not be liable and/or responsible for data left in any equipment.
- 16.6.14 In the event that a long-term rental rate is negotiated but a service is terminated prior to the conclusion of the agreed term, Texcel reserves the right to apply a pro-rata fee adjustment at the shorter-term rental rate.

Calibration Service

16.7 In the event that Texcel provides calibration Services to the Customer, the following provisions apply:

- 16.7.1 The Texcel calibration process is traceable and documented;
- 16.7.2 The monitor's sensors will be calibrated in accordance with AS2187.2 – 2006 – Clause J3.1.2(b) or such other standards as agreed with the Customer in writing;
- 16.7.3 The monitor will be calibrated by using calibrated multimeters or equivalent measuring instruments;
- 16.7.4 The monitor and all relevant associated equipment will be tested;
- 16.7.5 If any of the sensors prove to be unserviceable, the Customer will be quoted for their replacement.
- 16.7.6 If there are any faults with the monitor, the Customer will be quoted for the repairs, where appropriate.
- 16.7.7 Where necessary, Texcel will upgrade the firmware and software to the latest versions as part of the calibration Services;
- 16.7.8 Each monitor, where the calibration Services are completed, will be issued with a Calibration Certificate. Please note that a Calibration Certificate cannot be issued for a monitor that is not fully functional.
- 16.7.9 Texcel will not be liable and/or responsible for data left in any equipment.
- 16.7.10 Many older style monitors (for example EasyLink based monitors) cannot be calibrated. In such cases the only alternative may be to upgrade to a newer style monitor. The Customer will be advised when such a situation is encountered.

Mobile Calibration Service

16.8 In the event that Texcel provides mobile calibration Services to the Customer, the following provisions apply:

- 16.8.1 All monitors will undergo testing including but not limited to:
 - (a) Monitor and sensors calibrated;
 - (b) All equipment in kit thoroughly tested; and
 - (c) Firmware & Software Upgrades (where appropriate).
- 16.8.2 The monitor's sensors will be replaced with calibrated sensors from Texcel's Mobile Calibration stock.
- 16.8.3 The replaced sensors will be tested and re-calibrated when they are returned to Texcel's manufacturing facility.
- 16.8.4 If the replaced sensors prove to be unserviceable, the Customer will be charged for their replacement. Where the mobile calibration service is a part of a managed service, this clause does not apply.
- 16.8.5 Each monitor, where the calibration Services are completed, will be issued with a Calibration Certificate. Please note that a Calibration Certificate cannot be issued for a monitor that is not fully functional.
- 16.8.6 The Customer must ensure that monitor(s) and sensor(s) are delivered to the mobile calibration office on the mutually agreed date and time, if applicable.
- 16.8.7 Where Texcel is contracted to collect and return the monitors to site, the locations of the monitors and directions on how to get to them will be required in addition to the necessary site inductions (which will need to be organised for a mutually agreed date and time);
- 16.8.8 It is a condition of this service that the Customer, where necessary, accepts the additional charges for sensor replacements.
- 16.8.9 The mobile calibration service is not equipped with replacement components or the facilities to perform repairs. Any monitor deemed unserviceable will be returned to a Texcel authorised service centre for repair. All repairs of this nature will be quoted separately advised to the Customer.
- 16.8.10 It is required that the scope of works be mutually agreed and communicated in writing before the work is commenced. Should there be a variation(s) to the initial scope, additional charges may be incurred by the Customer.
- 16.8.11 In the event there are any changes to the scope of works that are outside the control of Texcel Pty Ltd, Texcel reserves the right to request compensation, in a manner to be mutually agreed.
- 16.8.12 Many older style monitors (for example EasyLink based monitors) cannot be calibrated. In such cases the only alternative may be to upgrade to a newer style monitor. The Customer will be advised when such a situation is encountered.

Repairs & Maintenance Service

16.9 In the event that Texcel provides repair and maintenance Services to the Customer, the following provisions apply:

- 16.9.1 All repairs and maintenance will be undertaken by Texcel at the nearest Texcel office by Texcel technicians.
- 16.9.2 The Customer shall be responsible for freight charges to and from the nearest Texcel office.
- 16.9.3 A quotation will be issued to a Customer for any propose repairs or maintenance.
- 16.9.4 An inspection fee equal to two (2) hours labour may be applied where a repair quotation has been provided but subsequently rejected by the Customer;
- 16.9.5 Many older style monitors cannot always be repaired as many components used for these monitors are no longer available. In such cases the only alternative may be to upgrade to a newer style monitor. The Customer will be advised when such a situation is encountered.