



**APPENDIX
TO TERMS AND CONDITIONS OF SALE
PRICE ESCALATION**

1. DEFINITIONS

“AUD” means Australian Dollar / Dollars

“AQIS” means Australian Quarantine and Inspection Services

“B.A.W” means Body Application Worksheet

“Composite Adjustment Factor” is the figure applied to the original base price to derive the Adjusted Base Price

“EXW Date” means the date of despatch of goods from the OEM

“JPY” means Japanese Yen

“OEM” means the Original Equipment Manufacturer

“S.M.A.R.T” means the Seller’s Structural Modification Assessment Request Transaction.

“USD” means United States of American Dollars

“VIN” means Vehicle Identification Number

All other terms contained herein have the meaning contained in the Offer of Sale.

2. BACKGROUND

The Purchaser acknowledges that the Seller is unable to supply a firm Price for the Goods due to factors beyond the Seller's control including foreign exchange rate, global price of steel, increases in costs from the OEM, freight costs and the cost of attachments and modifications carried out by Australian subcontractors. This Appendix sets out the manner in which such Price increases are governed.

The Seller undertakes to provide as much transparency as reasonably possible to permit the Purchaser to verify escalation in the Price.

3. PRICE ESCALATION

3.1 Currency

The Purchaser agrees that the Price may increase due to the changes in foreign exchange rates as set out below:

3.1.1 Prices quoted on non Australia held stock goods include an imported content

3.1.2 The Purchaser’s purchase order must commit to the currency / currencies in which payment will be made to the Seller and the Purchaser will not be accepted until such time as the Purchaser complies with this clause.

3.1.3 Should the Purchaser nominate that payment currency will be in AUD, any variation from the indicative rate indicated in the quotation and the date when Purchase Order Acceptance criteria has been met, will necessitate a price adjustment to the quoted price as follows:

3.1.3.1 The currency will be bought from a reputed commercial bank based in Australia.

3.1.3.2 The relevant foreign exchange rate(s) used in the final determination is the spot buying rate of the particular currency specified in the quotation less the relevant forward cover points up to the date of expected full payment of the Seller’s invoice by the Purchaser.

3.2 OEM Price Escalation

The Purchaser agrees that the Price may increase due to the OEM’s escalation for the supply of the Goods, as set out in the attached “OEM Price Escalation Mechanism”.

	TITLE	SOURCE	PROPORTION OF TOTAL PRICE(B)
a	LABOUR	U.S Department of Labour – Bureau of Labour Statistics CMU2010000000000D – Labour http://data.bls.gov/cgi-bin/surveymost?cm	30%
b	STEEL	WPU1017 – Steel http://data.bls.gov/cgi-bin/surveymost?wp	45%
c	INDUSTRIAL COMMODITIES	WPU03T15M05 - Industrial Commodities (excluding fuel) http://data.bls.gov/cgi-bin/surveymost?wp	20%
d	FUEL	WPU05 –Fuel http://data.bls.gov/cgi-bin/surveymost?wp	5%

ESCALATION FORMULA:

Adjusted Base Price = Original Base Price x W where:

"A" = (EXW Date Period **Labour** Index / Quotation Date **Labour** Index) x Proportion of Total Price

"B" = (EXW Date **Steel** Index / Quotation Date **Steel** Index) x Proportion of Total Price

"C" = (EXW Date **Commodities** Index / Quotation Date **Commodities** Index) x Proportion of Total Price

"D" = (EXW Date **Fuel** Index / Quotation Date **Fuel** Index) x Proportion of Total Price

"W" = **Composite Adjustment Factor = (A + B + C + D)**

3.3 Australian Attachments and Modification

The Purchaser agrees that the Price for any Australian manufactured components, alterations or extras may increase due to increases in steel and Australian labour as set out below:

	TITLE	SOURCE	PROPORTION OF TOTAL PRICE (B)
a	IRON & STEEL	6427 - Table 28 Series ID A2312240V I http://www.abs.gov.au/AUSSTATS/abs@.nsf/Deta ilsPage/6427.0Sep%202008?OpenDocument	60%
b	LABOUR	6345 - Table 10b Series ID A2159339W http://www.abs.gov.au/AUSSTATS/abs@.nsf/Deta ilsPage/6345.0Jun%202008?OpenDocument	40%

ESCALATION FORMULA:

Adjusted Base Price = Original Base Price x W where:

"A" = (Current Period **Steel** Index / Base Period **Steel** Index) x Proportion of Total Price +

"B" = (Current Period **Labour** Index / Base Period **Labour** Index) x Proportion of Total Price +

"W" = **Composite Adjustment Facto r = (A + B)**

3.4 Miscellaneous Costs

The Purchaser agrees that the Price may increase due to any difference or increased cost arising from any of the following between the date of offer and the date of delivery: customs and primage duty; freight costs; government tax or other levy including new taxes or levies.

4. METHOD OF PRICE ADJUSTMENT

4.1 Notice of Price Adjustment

Prior to delivery, the Seller must notify the Purchaser in writing of any Price adjustment together with reasonably sufficient supporting evidence of such increase ('Price Adjustment Notice'). If the Purchaser disputes the Price adjustment, within 2 days of receipt of the Price Adjustment Notice it must notify the Seller in writing stating the reasons for the dispute with supporting evidence, failing which the Purchaser is deemed to have accepted it.

4.2 Dispute Resolution

If the Purchaser disputes the Price Adjustment Notice within the time stated in clause 5.1, the parties agree to attempt to resolve it at the lowest possible level. If the Dispute is not resolved within 10 days of, either Party may give to the other Party written notice of dispute adequately identifying and providing details of the dispute and the parties must each designate a person with authority to settle the Dispute. Within 2 days of receipt of the notice of dispute, the parties must confer at least once to resolve the Dispute or agree on methods of doing so. If the Dispute is not resolved (or a method of resolution not agreed upon) within 7 days of service of the notice of dispute, either Party may refer the Dispute to expert determination. The expert must be appointed by agreement of the parties or, if they fail to agree, on the application of either Party by the President from time to time of AusIMM. The expert shall be instructed to decide or appraise the Dispute within the shortest practicable time and deliver a report stating his or her opinion with respect to the matters in dispute, setting out the reasons for his or her decision or appraisal. The Parties must provide the expert with all the information and assistance he or she reasonably requests for the purpose of resolving the Dispute. The expert must also determine who is to pay the expert's fees and in what proportion. The expert appointed under this clause acts as an expert and not as an arbitrator. Where the expert is asked for a determination, his or her decision shall be conclusive and final and binding on the Parties (except in the case of manifest error). Where the expert is asked for an appraisal, his or her opinion will not be binding on the Parties. The Parties agree that they shall have no right to commence proceedings in any court in any jurisdiction (other than to enforce payment due under this Sale or to seek urgent injunctive or declaratory relief) in connection with a Dispute unless they have first complied with this clause.