

1. DEFINITIONS

“**Agreement**” means these terms, and includes the Quote and other documents between the Supplier and the Customer relating to the sale of the Equipment.

“**Business Day**” means a day that is not a Saturday, Sunday or public holiday in Brisbane.

“**Collection Notification Statement**” means the notification of collection of personal information as required under Australian Privacy Principle 5 of the Privacy Act 1988.

“**Confidential Information**” means any information communicated by one party to the other whether in writing, orally or in any other form or medium in relation to this Agreement and includes, but is not limited to; a party’s operations, business or customers; marketing and financial data; commercialisation; methodology; pricing, concepts; product plans, drawings and product specifications; manufacturing processes; future market and product plans; trade secrets; know-how; technical economic or other information not already in the public domain.

“**Customer**” means the party or parties named in the Quote as the “Customer”, its representatives, administrators and successors, and where more than one, each and all of them jointly and severally.

“**Equipment**” means the equipment supplied by the Supplier to the Customer including parts of equipment supplied from time to time.

“**ex Works**” means out of the premises at 65 Wentworth Street, Banyo, Queensland or such other premises advised by the Supplier to the Customer from time to time.

“**GST**” means the goods and services tax under the GST Act.

“**GST Act**” means A New Tax System (Goods and Services) Tax Act and includes other GST related legislation.

“**Losses**” includes all loss and damages (including consequential loss or damage), cost and expenses of any nature whatsoever.

“**Quote**” means the document under which the price for the Equipment is quoted to the Customer.

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth).

“**PPS Property**” means any property over which a security interest (as that term is defined under the PPSA) can be legally granted under the PPSA.

“**PPSR**” means the Personal Property Securities Register established under section 147 of the PPSA.

“**Privacy Law**” means the *Privacy Act 1988* (Cth).

“**Sale Price**” means the sale price of the Equipment, expressed in the Quote or other document between the Supplier and the Customer.

“**Site**” means the location to which the Equipment will be transported.

“**Supplier**” means The Energy Network (Australia) Pty Ltd ACN 093 052 441.

“**Training**” means any training required to be undertaken by the Customer to enable it to use the Equipment.

2. SUPPLY OF EQUIPMENT AND INVOICING

These terms apply to any or all dealings between the Customer and the Supplier for the sale of the Equipment.

3. PAYMENT

- (a) The Customer must pay the Sale Price without set-off or counter-claim.
- (b) Subject to any credit arrangements agreed between the parties, the Sale Price is due and payable in full on delivery of the Equipment or no later than 5 Business Days from the date the Supplier notifying the Customer that the Equipment is available for delivery, whichever is earlier. If the Customer fails to make payment, then (without prejudice to any other rights of the Supplier) the Supplier may:
 - (i) suspend deliveries to be made to the Customer;
 - (ii) terminate this Agreement, and at its election any other agreement with the Customer, and claim damages for breach.
- (c) The Customer must pay, in addition to the Sale Price, the cost of all modifications to the Equipment, mobilisation, demobilisation and commissioning of the Equipment as

required by the Customer together with a reasonable allowance for profit and overhead.

- (d) If, before delivery of the Equipment to the Customer, there is any change in costs or circumstances beyond the control of the Supplier, the Supplier may increase the Sale Price by notice to the Customer.
- (e) The Customer may by notice in writing to the Supplier cancel this Agreement within 3 Business Days after receipt of the notice in clause 3(d), unless the Customer takes delivery of the Equipment under clause 5 or if such increase results from a change in any applicable tax or other additional cost set out in the Quote.
- (f) If GST is imposed on the supply of the Equipment and other supplies by the Supplier which are taxable supplies for the purposes of the GST Act, then unless the Sale Price is expressed in the Quote to be GST inclusive, the amount the Customer must pay is increased by the amount of the GST.
- (g) The Supplier will accept payment by cash, cheque, credit card, or electronic funds transfer. Payments by credit card will attract an additional amount to cover merchant service fees.
- (h) The Supplier may, at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance, or terminate any Accepted Customer Order, by written notice to the Customer and will not be liable for loss or damage resulting directly or indirectly from any such action where the Customer:
 - (i) defaults on any payment due under these terms and conditions;
 - (ii) product ordered has been discontinued;
 - (iii) order is unable to be completed due to the Supplier being unable to secure materials to fulfill the Customer order;
 - (iv) there are movements of plus or minus 10% or greater in foreign exchange rates, customs duty, shipping costs, clearance costs and wharf charges applicable to Products between the date the quote is accepted by the Supplier and the Customer Order is fulfilled.
 - (v) commits an act of bankruptcy;
 - (vi) is subject to a petition, order or meeting to consider a resolution for the Customer to be wound up, deregistered or dissolved, has a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 (Cth) appointed to all or any part of the Customer’s property, is subject to an undertaking, a scheme of arrangement, other than for the purpose of restructuring, or is subject to any assignment for the benefit of creditors.

4. INTEREST ON LATE PAYMENTS

The Supplier may charge interest at 2% per month calculated on a daily basis on all late payments.

5. DELIVERY & TRANSPORTATION

- (a) The Customer must take delivery of the Equipment ex Works within 5 Business Days from the Supplier notifying the Customer that the Equipment is available for delivery.
- (b) The Customer is responsible for, must bear the risk of any damage to, and must pay the cost of all transportation of, the Equipment.
- (c) If the Supplier arranges for transportation of the Equipment to the Customer, it will not be responsible for any late delivery, non-delivery, or loss or damage occasioned from such transportation.
- (d) The Supplier must take reasonable steps to make the Equipment available for delivery on or about the estimated delivery date. The Supplier is not responsible for any delay or failure to do so. If the Supplier does not notify the Customer that the Equipment is available for delivery within 120 days after the estimated delivery date, the

Customer may cancel this Agreement.

6. RETURNS

Express approval for return of goods must first be obtained from a duly authorized officer of the supplier and a RMA (Returns Material Authorization) number must be issued. Claims for any Products which are damaged or defective or incorrectly supplied, or which are not otherwise in accordance with the Customer's order, may be returned to the supplier within 14 days of delivery via transport nominated by the supplier, at no cost to the Customer.

The Customer may otherwise return Products to the supplier and obtain a credit:

- a) Except for specially purchased products or products specifically tailored for the Customer's requirements which may not be returned.
- b) Provided that it does so within 14 days of delivery and a returns material authorization is obtained from the supplier.
- c) Provided that the Products are in their original condition, being as new and in a saleable condition.
- d) At the Customer's own expense, or to the Customer's account, and
- e) On the basis that risk in the Products remains with the Customer until the Products are received by the supplier, goods returned for credit will incur a 20% restocking fee from the invoiced value of goods.

The Equipment is at the risk of the Customer ex Works.

7. SITE PREPARATION

If the Supplier agrees to transport the Equipment to the Site, the Customer will, at its expense and prior to transportation of the Equipment, ensure that the Site is prepared as directed by the Supplier.

8. SAFETY & TRAINING

- (a) If required by the Supplier, the Customer must undertake Training (at the times and costs specified in the Quote). The Training provided is dependent upon the type of Equipment and may be limited to a maximum number of participants.
- (b) The provision of additional Training may be requested by the Customer, and is to be conducted at mutually acceptable times and at the cost of the Customer.
- (c) The Customer must comply with all safety and Training requirements. The Customer must not make any claim against the Supplier and further indemnifies the Supplier against any and all Losses or damage (to person or property) arising from, or contributed to by, the Customer's failure to carry out safety and Training requirements

9. RETENTION OF TITLE & OWNERSHIP

- (a) Title in the Equipment will only pass to the Customer once the Sale Price has been paid in full.
- (b) If the Supplier accepts payment by cheque, that payment shall be deemed not to have been made until the cheque is cleared.
- (c) If the Equipment is transported to the Customer before payment is made, the Customer shall have possession of the Equipment as bailee only, even if the Customer has a credit account with the Supplier. Whilst bailee of the Equipment, the Customer must not part with possession of the Equipment and shall be responsible for any damage to or loss to it.

10. PROCEEDS OF SALE

If the Equipment is resold, the Customer holds all of the book debts owed in respect of such sales and proceeds in respect of such sales on trust for the Supplier and must keep such proceeds of sale in a separate account and not mix such proceeds with any other funds. Such part of the book debts and proceeds are deemed to equal in dollar terms the amount owed

by the Customer to the Supplier at the time of the receipt of such book debts and proceeds.

11. ALLOCATION OF FUNDS

The Supplier may at their discretion and in such manner as they determine allocate payments made by the Customer as payment for any Equipment supplied by the Supplier or any other amount that may be due to the Supplier by the Customer.

12. DEFAULT

- (a) If the Customer fails to punctually observe and perform all of its fundamental obligations under this Agreement, the Supplier may, subject to the terms of this Agreement, do any or all of the following:
 - (i) re-sell the Equipment;
 - (ii) forfeit and retain any monies paid on account of the Sale Price;
 - (iii) sue the Customer for breach and recover from the Customer any shortfall from the resale the Equipment;
 - (iv) enter upon any premises where the Equipment is located and take possession of it and if necessary, dismantle it from anything to which it is attached. The Customer will be deemed to have granted an irrevocable authority to the Supplier in the exercise of the Supplier's right under this clause 12. The Customer waives and releases the Supplier from any liability for any damage or Losses occasioned by the repossession of the Equipment. Repossession does not constitute a waiver of any claim by the Supplier against the Customer under this Agreement.
- (b) Without prejudice to the rights and remedies of the Supplier, it will be entitled to recover from the Customer any and all damages or Losses which the Supplier may sustain by reason of any breach by the Customer, together with legal fees (on a full indemnity basis) and such expenses expended or incurred in the seizure, hire or resale of the Equipment.
- (c) The exercise of the Supplier's rights under this clause does not release the Customer from the obligation to pay any sum due to the Supplier or discharge any other obligation of the Customer whether arising before or after the exercise of such rights.

13. PPSA TERMINOLOGY

For the purposes of clauses 14 to 21, the terms "accession", "account", "amendment demand", "control", "financing change statement", "financing statement", "perfected", "proceeds", "purchase money security interest", "registration event", "security interest" and "verification statement" have the meanings given to them under the PPSA.

14. PROCEEDS AND ACCESSIONS

The Customer acknowledges and agrees that any security interest created by this Agreement, or the transactions contemplated by it:

- (a) extends to, and acts as a security interest in respect of, any:
 - (i) proceeds (including any account) derived from, or from a dealing with, the Equipment;
 - (ii) accession to the Equipment; and
 - (iii) continues in the Equipment if the Equipment becomes an accession.

15. REGISTRATION AND PRIORITY

The Customer agrees to do anything which the Supplier may require from time to time to:

- (a) enable the Supplier to register fully valid and effective financing statements or financing change statements with respect to any security interest over PPS Property created by this Agreement or the transactions contemplated by it; and
- (b) ensure that any security interest which is purported to be

reserved or created by this Agreement, or the transactions contemplated by it, is:

- (i) a first ranking perfected security interest over all PPS Property;
- (ii) perfected by control to the extent possible under the PPSA; and
- (iii) if applicable, recorded as a purchase money security interest on the PPSR.

16. UNDERTAKINGS

The Customer undertakes and agrees:

- (a) to not, without first giving the Supplier 10 business days' written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any security interest created by the Agreement or any transaction contemplated by it;
- (b) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement;
- (c) to not, without the prior written consent of the Supplier, lodge or serve a financing change statement or an amendment demand in relation to any security interest created by this Agreement or any transaction contemplated by it;
- (d) that the Equipment supplied by the Supplier to the Customer under the Agreement are not intended, and shall not be used, for personal, household or domestic purposes.

17. VERIFICATION STATEMENTS

The Customer irrevocably waives its right to receive from the Supplier any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPSA.

18. ENFORCEMENT

The Supplier and the Customer agree that:

- (a) to the extent that section 115(1) of the PPSA allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 136B(4), 142 and 143; and
- (b) to the extent that section 115(7) of the PPSA allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137,

do not apply to any enforcement by the Supplier of any security interest created by this Agreement or any transaction contemplated by it.

19. NEGATIVE PLEDGE

The Customer shall not enter into any security agreement with any other party that creates a security interest in respect of the Equipment or proceeds of the Equipment.

20. SUPPLIER MAY SELL AND RECOVER FROM PROCEEDS

For the purposes of the PPSA:

- (a) where the Supplier takes possession of the Equipment upon default of the Customer, the Supplier may, should it choose to do so and without derogating from its rights under clause 9:
 - (i) sell the Equipment by any means and at any time;
 - (ii) deduct from any proceeds of sale, all costs incurred in relation to the sale;
 - (iii) retain for its own use and benefit any part of the purchase price for the Equipment which remains outstanding; and
 - (iv) apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Supplier has priority over other security interests;
- (b) where there is a shortfall on any sale or attempted sale of the Equipment, the Supplier continues to hold their security interest in the Equipment and may recover the

shortfall from the Customer.

21. SUPPLIER MAY LEASE EQUIPMENT AND RECOVER FROM LEASE CHARGES

For the purposes of the PPSA:

- (a) where the Supplier takes possession of the Equipment upon default of the Customer, the Supplier may, should it choose to do so and without derogating from its rights under clause 9:
 - (i) lease the Equipment by any means and at any time;
 - (ii) deduct from any lease charges, all costs incurred in relation to the lease;
 - (iii) retain for its own use and benefit any part of the purchase price for the Equipment which remains outstanding; and
 - (iv) apply any balance to monies owed by the Customer on any account (even if not due and payable) to the extent to which the Supplier has priority over other security interests;
- (b) where there is a shortfall on any lease or attempted lease of the Equipment, the Supplier continues to hold their security interest in the Equipment and may recover the shortfall from the Customer.

22. CONFIDENTIALITY

(a) Each Party agrees:

- (i) that the Confidential Information of a party remains the property of that party;
- (ii) to not disclose Confidential Information, including information of the kind referred to in section 275(1) of the PPSA;
- (iii) that this clause 22 constitutes a confidentiality agreement for the purposes of section 275(6)(a) of the PPSA and other provisions of the PPSA;
- (iv) to keep the terms of this Agreement and any Quote confidential; and
- (v) all information they supply to each other is supplied in strict confidence and is to be used solely by the recipient for the purpose carrying out its respective obligations under this Agreement.

- (b) The Customer agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

23. PRIVACY LAW

- (a) The Customer agrees to comply with Privacy Law.
- (b) The Customer acknowledges that it has read and agrees to the Collection Notification Statement and the Supplier's Privacy Policy.
- (c) The Customer consents, acknowledges and agrees that:
 - (i) any personal information provided to the Supplier may be transferred to and stored at a destination outside Australia, or processed by Personnel or other third parties operating outside of Australia, being New Zealand where it utilizes third party service providers to assist TEN in connection with this Agreement; and
 - (ii) by entering into the Agreement and submitting personal information to TEN, the Customer expressly agrees and consents to the disclosure, transfer, storing or processing of any personal information outside of Australia in the manner permitted by paragraph 23(c)(i).
- (d) In providing this consent, the Customer understands and acknowledges that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to personal information.

24. TERMINATION

Without prejudice to any other rights of the Supplier, the

Supplier may terminate this Agreement if:

- (a) the Customer breaches this Agreement, or any other agreement with the Supplier, or any agreement with any other Supplier;
- (b) any event occurs which, in the reasonable opinion of the Supplier, would or may adversely affect the ability of the Customer to pay any amount to the Supplier;
- (c) the Customer fails to pay any amount due to the Supplier when it is due; or
- (d) a receiver or manager, liquidator, administrator, other controller or trustee in bankruptcy is appointed to the Customer or any of its assets.

25. VARIATION

- (a) The Supplier may vary this Agreement from time to time upon notification by the Supplier to the Customer in writing.
- (b) If the Supplier varies this Agreement in accordance with clause 25(a), the Customer may terminate this Agreement within 30 days from the date the notification of the variation is given to the Customer by providing written notice to the Supplier.
- (c) If the Customer does not terminate this Agreement within the period referred to in clause 25(b), the Customer is deemed to have accepted the variation of this Agreement made in accordance with clause 25(a).
- (d) The Supplier Terms & Conditions of Sale may vary from time to time and will be updated and published on the Suppliers website: www.tengroup.com.au.

26. COMPLETION OF INFORMATION

At the date of this Agreement, certain information relating to Equipment (such as serial number, year of manufacture, stock number and registration number) may not be available and the Customer authorises the Supplier to complete relevant sections of this Agreement on receipt of such information.

27. SUPPLIER'S LIABILITY

- (a) To the extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), all conditions, terms and warranties which are not expressly provided in this Agreement are excluded. To the extent permitted by law, the Supplier's liability is limited (at the Supplier's election) to one of the following:
 - (i) replacing the Equipment; or
 - (ii) repair of the Equipment; or
 - (iii) the cost of replacing the Equipment; or
 - (iv) the cost of repairing the Equipment.
- (b) To the extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Supplier is not liable to the Customer for any losses arising out of or in connection with the supply of the Equipment including any negligent act or omission or misconduct on the Supplier's part.
- (c) To the extent permitted by law (including but not limited to the Competition and Consumer Act 2010 (Cth)), the Customer indemnifies the Supplier for any losses arising out of or in connection with the supply of the Equipment including, any negligent act or omission or misconduct on the Supplier's part.
- (d) Every exemption from liability and every defence and immunity of any nature applicable to the Supplier or to which the Supplier is entitled by this Agreement extends to every employee or agent of the Supplier (including independent contractors) while acting in the course of or in connection with their employment or engagement.

28. GENERAL MATTERS

- (a) The Customer acknowledges that it has inspected the Equipment and confirms that it is fit for the purpose for which the Customer requires it.
- (b) The Customer acknowledges that the Equipment may differ

from the images or description stated on the website of the Supplier or its catalogues, product datasheets, advertising documents and the Supplier is not liable for any loss, claim or liability associated with any difference between the Equipment and any description of it.

- (c) If any of the provisions of this Agreement are unenforceable, void, voidable or illegal, then such shall be severed and the other provisions of this Agreement remain in full force and effect.
- (d) Any failure or delay by the Supplier to exercise a power, right or remedy pursuant to this Agreement does not operate as a waiver of that power, right or remedy nor does it constitute a waiver or release of any breach by the Customer. The waiver of any right of the Supplier under this Agreement is only valid if made by notice in writing from the Supplier to the Customer. The waiver of a power or right is effective only in respect of the specific breach by the Customer to which it relates and for the specific purpose for which it is given.
- (e) This Agreement shall be governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.
- (f) The Customer declares that it has read this Agreement and agrees that this Agreement is the complete and exclusive statement of the Agreement between the parties.
- (g) The Customer must not assign this Agreement or any of its rights under it. Where the Supplier reasonably considers there will be no detriment to the Customer, the Supplier may assign or charge this Agreement, and any of its rights to any other party.