

The following terms and conditions form part of any contract for the provision of goods or services provided by TEN to any person, firm, company, body corporate, associate or other entity who requests TEN to supply goods or services (**Customer**).

## 1. Definitions and Interpretation

### 1.1 Definitions

In this agreement:

**Authorised Officer** means, in relation to a corporation which is a party:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this deed and notified to the others.

**Business Day** means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

**Charge** means any amount payable by the Customer to TEN under clause 6.1.

**Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this Supply Agreement.

**Competent Personnel** means personnel with such qualifications, experience and training as TEN considers appropriate, and includes personnel holding a relevant, current certificate of competency issued by TEN.

**Cost** means any charge, cost, expense, outgoing, payment or other expenditure of any nature including legal fees on a full indemnity basis (whether calculated on a time charge basis or otherwise).

**Credit Application** means an application for credit completed by the Customer and submitted to TEN.

**Credit Facility** means a Credit Application which has been accepted by TEN.

**Credit Limit** means the credit limit in respect of the Credit Facility notified by TEN to the Customer from time to time.

**Customer Details** means any contact details for the Customer contained in a Credit Application or, in the absence of a Credit Application, the Quote.

**Damage** means any award, Cost, damage, injunction, injury, judgment, Liability, Loss or order.

**Dispute Notice** has the meaning given to it in clause 15(a).

**Equipment Hire Agreement** has the meaning given to it in clause 3.3.

**Equipment** means any goods, chattels, plant, equipment, or machinery, including any machinery, tools, vehicles, parts, accessories, and structures supplied or serviced under a Supply Agreement.

**Equipment Sale Agreement** has the meaning given to it in clause 3.2.

**Event of Default** means an event as described in clause 13.2.

**Government Body** means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

**GST Law** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings.

**Hire Equipment** means any Equipment which is hired by the Customer from TEN.

**Insolvency Event** means:

- (a) in relation to any corporation:
  - (1) the appointment of an administrator or provisional liquidator in respect of it;
  - (2) its winding up (whether voluntary or involuntary);
  - (3) dissolution occurs;
  - (4) a receiver, receiver and manager or trustee is appointed in respect of the corporation or its property;
  - (5) a ground for winding up occurs in relation to the corporation;
  - (6) the corporation ceases or threatens to cease to carry on its business;
  - (7) the corporation being deemed to be or stating that it is unable to pay its debts when they fall due;

- (8) the corporation enters into, or resolves to enter into any arrangement, composition or compromise with or an assignment for the benefit of all or any class of its creditors; and
- (9) an application being made which is not dismissed or withdrawn within ten (10) Business Days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above;

- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth); and
- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any relevant jurisdiction.

**Invoice** means an invoice issued under clause 7.1.

**Liability** means a debt, liability or Obligation, quantified or unquantified, whether:

- (a) actual, contingent or prospective;
- (b) present or future;
- (c) qualified or unqualified; or
- (d) incurred jointly or severally with any other person,

and **Liabilities** has a corresponding meaning.

**Loss** means any loss (including loss of profit and loss of expected profit), diminution in value or deficiency of any kind whether indirect, consequential or otherwise.

**Obligation** means any commitment, covenant, duty, obligation or undertaking whether arising by operation of law, in equity or by statute and whether express or implied.

**PPS Act** means the Personal Property Securities Act 2009 (Cth).

**Pre-Payment** means any Charge which must be paid in advance by the Customer in accordance with clause 6.2.

**Quote** means a detailed, written quote issued by TEN to the Customer in respect of the provision of a Supply Item.

**Sale Equipment** means any Equipment which is sold to the Customer by TEN.

**Security Interest** means:

- (a) an interest in or right:
  - (1) reserved over property (including any retention of title to property or any right to set off or withhold payment of any deposit or other money);
  - (2) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right; or
  - (3) by way of security for the payment of a debt or other monetary Obligation or the performance of or compliance with any other Obligation;
- (b) any instrument or transaction which reserves, constitutes or evidences the interests and rights referred to in paragraph (a); and
- (c) any other interest which constitutes a security interest as that term is defined in the PPS Act.

**Service & Repair Agreement** has the meaning given to it in clause 3.4.

**Service** means any service provided by TEN to the Customer under a Supply Agreement, whether directly or through an employee, subcontractor or other agent.

**Special Condition** means a provision contained in a Special Conditions Schedule.

**Supply Agreement** means the contract formed upon the Customer's acceptance of a Quote, the entire terms of which contract are constituted by these Terms & Conditions in conjunction with the Quote.

**Supply Category** has the meaning given to it in clause 3.1.

**Supply Item** has the meaning given to it in clause 4.1(b)(2).

**Tax Invoice** means a document that complies with the requirements of the GST Law for a tax invoice.

**Tax** means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

**Taxable Supply** has the meaning given to it under the GST Law.

**Training Agreement** has the meaning given to it in clause 3.5.

**Training Sessions** mean operator competency training sessions in respect of the use, operation and maintenance of machinery and equipment.

## 2. Interpretation

In these Terms & Conditions, unless the contrary intention appears:

- (a) a reference to:
  - (1) these Terms & Conditions or another document includes any variation or replacement of it notwithstanding any change in the identity of the parties;
  - (2) any statute, ordinance, code or other law includes regulations and other statutory instruments under any of them and consolidations, amendments re-enactments or replacement of any of them;

- (3) a person, firm, corporation, association or Government Body includes any other of them;
- (4) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns;
- (5) a time is a reference to Brisbane time unless otherwise specified; and
- (6) a right includes a benefit, remedy, authority, discretion and power;
- (b) a reference to "TEN" means a reference to the entity that issues the Quote, as described in the Quote;
- (c) the singular includes the plural and vice versa;
- (d) headings shall not affect the construction;
- (e) if the day on which:
  - (1) anything, other than a payment, is to be done is not a Business Day, that thing shall be done on the preceding Business Day; and
  - (2) a payment is to be made is not a Business Day it shall be made on the next Business Day but if the next Business Day falls in the next calendar month it shall be made on the preceding Business Day;
- (f) if an act is required to be done on a particular day and the act is done after 5.00pm on that day, it will be deemed to have been done on the following day;
- (g) where two or more persons are defined as a party to a Supply Agreement that term means each of the persons jointly, each of them severally and any two or more of them jointly; and
- (h) an agreement, covenant, Obligation, representation or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, Obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

### 3. Supply Categories

#### 3.1 Supply Categories

These Terms & Conditions apply to any past, present or future agreement between the parties which falls into one of the following categories (each a **Supply Category**):

- (a) Equipment Sale Agreement;
- (b) Equipment Hire Agreement;
- (c) Service & Repair Agreement; and
- (d) Training Agreement.

#### 3.2 Equipment Sale Agreement

An agreement is an Equipment Sale Agreement if it contemplates the purchase of Sale Equipment by the Customer.

#### 3.3 Equipment Hire Agreement

An agreement is an Equipment Hire Agreement if it contemplates the hire of Hire Equipment by the Customer.

#### 3.4 Service & Repair Agreement

An agreement is a Service & Repair Agreement if it contemplates the provision of servicing, repairs or refurbishment of Equipment for the Customer.

#### 3.5 Training Agreement

An agreement is a Training Agreement if it contemplates the provision of Training Sessions to the Customer.

### 4. Quotes

#### 4.1 Quotes

- (a) At the Customer's request, TEN will from time to time provide the Customer with Quotes.
- (b) A Quote may set out:
  - (1) the Supply Category that it relates to;
  - (2) a description for each individual item of Equipment or Service to be supplied (**Supply Item**);
  - (3) the required quantity for each Supply Item (**Quantity**); and
  - (4) any other details which may be included under the Special Conditions which apply.

#### 4.2 Scope of Quote

The parties agree that:

- (a) the precise scope of a Supply Item to be provided by TEN is set out in the Quote; and
- (b) if the Customer wishes to engage TEN to provide additional Supply Items, it must obtain a separate Quote from TEN in relation to those Supply Items.

#### 4.3 Revised Quote

- (a) At any time prior to accepting a Quote, the Customer may provide notice orally or in writing to TEN requesting an amendment to the Quote.
- (b) If, while performing a Supply Agreement, TEN identifies additional Supply Items to be provided which are outside the scope of the Quote, TEN must issue a revised Quote for the provision of these additional Supply Items.

#### 4.4 Timeframe for Acceptance of Quote

- (a) A Quote is valid for the period specified in the Quote.
- (b) A Customer cannot accept a Quote after the date on which the Quote expires. Any such purported acceptance will be of no force or effect.
- (c) TEN may withdraw or vary a Quote at any time prior to acceptance by the Customer under clause 4.5.

#### 4.5 Acceptance by Customer

- (a) The Customer will have accepted a Quote if it:
  - (1) signs and returns a copy of the Quote; or
  - (2) orally agrees to the Quote; or
  - (3) provides instructions (orally or in writing) to TEN to commence the Supply Item after receiving the Quote; or
  - (4) issues a purchase order to TEN in respect of the Supply Item after receiving the Quote; or
  - (5) accepts delivery or performance of the Supply Item.
- (b) TEN is under no Obligation to perform the Supply Item unless and until the Customer has accepted the Quote.

#### 4.6 Supply Agreement

If the Customer accepts a Quote:

- (a) upon acceptance, a Supply Agreement will come into existence between the parties; and
- (b) the Quote, together with these Terms & Conditions, will constitute the entire terms of that Supply Agreement.

#### 4.7 No Variations

Nothing in a purchase order or in any other document given by the Customer to TEN shall have the effect of varying any provision contained in these Terms & Conditions or creating or altering the rights, Liabilities or Obligations of any party. The Customer acknowledges and agrees that TEN does not accept any terms contained in any purchase order or in any other document given by the Customer to TEN, and no act on TEN's part (including the supply of relevant Supply Items) constitutes acceptance of any such terms.

#### 4.8 Invalidity of other Agreements

Any arrangement which falls into one of the Supply Categories in clause 3.1 is void and invalid to the extent that it purports to vary any of these Terms & Conditions or create any rights, Liabilities or Obligations not contemplated by these Terms & Conditions.

### 5. Special Conditions

#### 5.1 Special Conditions Schedules

A Special Condition will only apply to a Supply Agreement if that Special Condition is contained in the Schedule which appears next to the Supply Category for that Supply Agreement in the below table:

Supply Category	Special Conditions
Equipment Sale Agreement	Schedule 1
Equipment Hire Agreement	Schedule 2
Service & Repair Agreement	Schedule 3
Training Agreement	Schedule 4

#### 5.2 Inconsistencies

If there is any inconsistency or ambiguity between provisions in the documents constituting a Supply Agreement, the order of precedence to resolve the inconsistency or ambiguity shall be as follows:

- (a) the Quote for the Supply Agreement;
- (b) any applicable Special Conditions; and
- (c) any other clause in these Terms & Conditions.

### 6. Payment of Charges

#### 6.1 Supply Charges

- (a) The amount payable for a Supply Item will be set out in the Quote (**Supply Charge**).
- (b) The Customer agrees to pay to TEN:
  - (1) all Supply Charges; and
  - (2) any other additional amount which becomes payable under a Supply Agreement, (**Charge**) on the terms set out in these Terms & Conditions.

#### 6.2 Pre-Payment of Charges

- (a) If a Quote specifies that a Charge must be paid by Pre-Payment, that Charge must be paid by the Customer in advance of any Supply Item being provided by TEN.

- (b) Any Charges which are not paid by Pre-Payment or are not otherwise dealt with in the Quote must be paid in accordance with clause 7.

### 6.3 Payment without Credit Facility

Unless otherwise specified in the Quote, if the Customer does not have a Credit Facility:

- (a) all Supply Charges must be paid by Pre-Payment;
- (b) TEN may require the Customer to pay any further amount by Pre-Payment at any time to cover any additional Charges which may be payable under a Supply Agreement; and
- (c) no Obligation in any Supply Agreement will become binding upon TEN until all Pre-Payments have been received by TEN.

### 6.4 Payment with Credit Facility

Unless otherwise specified in the Quote, if the Customer has a Credit Facility, any portion of the Supply Charges that exceed the Customer's Credit Limit must be paid by Pre-Payment.

### 6.5 Electronic Payment

- (a) Subject to clause 6.6, the Customer must pay all Charges by credit card (Visa and Mastercard only) or any other method of electronic transfer that TEN may allow, into any account that TEN may nominate from time to time.
- (b) Payments made by credit card will incur a payment processing fee of 1.8%.

### 6.6 Overpayment and Right to Set Off

- (a) If any amount paid by the Customer to TEN exceeds the Customer's Liabilities under a Supply Agreement, TEN may elect to either credit that amount towards the Customer's other Liabilities owing to TEN or refund it to the Customer.
- (b) TEN may, by prior written notice, set off against any outstanding Charges any amount owing to the Customer by TEN whether under a Supply Agreement or otherwise.

## 7. Invoicing

### 7.1 Issuing Invoices

TEN may, at any time:

- (a) issue an Invoice to the Customer for any Charges which TEN considers to have become payable during the period of time for which that Invoice is issued (**Billing Period**); or
- (b) amend or re-issue any Invoice which has previously been issued with respect to any Billing Period if it believes that any Charge was omitted or incorrectly calculated.

### 7.2 Payment of Invoices

All Charges contained in an Invoice must be paid by the Customer:

- (a) if the Customer has a Credit Facility and has not exceeded its Credit Limit, within the credit period for that Credit Facility; or
- (b) otherwise, on the terms specified in the Invoice.

## 8. Insurance

### 8.1 Current Insurance

The Customer must obtain and maintain at all times with a reputable insurance company:

- (a) where a Supply Agreement contemplates that the Customer is responsible for collecting, shipping or transporting Equipment, insurance for the replacement value of the Equipment against Damage, including Damage in transit to the Customer's address for delivery;
- (b) a broad form public liability policy of insurance to the value of at least \$20,000,000 in respect of each claim covering all Damage or Claims arising out of or in connection with a Supply Agreement (including Damage to property, personal injury to any person and the use or operation of the Equipment);
- (c) third party and property Damage insurance with coverage in the sum of \$20,000,000; and
- (d) any other insurance that TEN reasonably considers necessary to ensure its interests are protected against any Liability incurred under a Supply Agreement, including any such higher cover limits as TEN may reasonably require from time to time.

### 8.2 Certificates of Currency

The Customer must provide to TEN copies of the certificates of currency for each of the insurance policies referred to in clause 8.1 upon request.

## 9. Security Interest over Equipment

### 9.1 Terminology

In this clause 9, the terms Accession, Financing Statement, Financing Change Statement, Proceeds, Register and Security Agreement have the meanings given to them in the PPS Act.

### 9.2 Creation of Security Interest

The Customer acknowledges and agrees that:

- (a) these Terms & Conditions constitute a Security Agreement that creates a Security Interest in all Equipment sold, leased, hired or otherwise supplied by TEN to the Customer from time to time; and
- (b) each Security Interest created under or in connection with these Terms & Conditions or any transaction contemplated by them:

- (1) extends to and acts as a Security Interest in respect of any Accession to the Equipment and any proceeds derived from, or from a dealing with, the Equipment, and continues in the Equipment if the Equipment becomes an Accession; and
- (2) is a continuing Security Interest which will operate (despite any intervening payment or settlement of account) until TEN has signed a release.

### 9.3 Waivers in Relation to Security Interest

TEN and the Customer agree that:

- (1) to the extent that section 115(1) of the PPS Act allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (2) to the extent that section 115(7) of the PPS Act 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 TEN of any Security Interest created under or in connection with these Terms & Conditions.

(b) The Customer waives its right to receive anything from TEN under section 275 of the PPS Act and agrees not to make a request of TEN under that section.

(c) The Customer and TEN agree for the purposes of section 275(6) of the PPS Act that neither the Customer nor TEN will disclose any information in the nature of that mentioned in section 275(1) of the PPS Act.

(d) Without limiting any other provision of these Terms & Conditions, the Customer waives its right to receive any verification statement (or notice of any verification statement) in respect of any Financing Statement or Financing Change Statement relating to any Security Interest created under or in connection with these Terms & Conditions.

### 9.4 Customer's Undertakings for Security Interest

The Customer undertakes and agrees:

- (a) to keep all Equipment free of any charge, lien or Security Interest except as created under these Terms & Conditions;
- (b) not to deal with the Equipment in a way that may prejudice any rights of TEN under these Terms & Conditions or the PPS Act;
- (c) to do anything, including sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that TEN may require to:
- (1) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
- (2) register any other document required to be registered by the PPS Act;
- (3) correct a defect in a statement referred to in clause 9.4(c)(1) and clause 9.4(c)(2); or
- (4) ensure that each Security Interest created under or in connection with these Terms & Conditions, or any transaction contemplated by them, is a first ranking perfected Security Interest over all Equipment;
- (d) to indemnify, and upon demand reimburse, TEN for all fees (including actual legal fees on a solicitor and own client basis), Costs, disbursements and expenses in:
- (1) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Equipment charged thereby; and
- (2) enforcing or attempting to enforce the Security Interest created by these Terms & Conditions; and
- (e) not to register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Equipment (or Proceeds derived from, or from a dealing with, the Equipment) in favour of a third party, without the prior written consent of TEN.

### 9.5 Obligation to Maintain Company Details

The Customer undertakes and agrees:

- (a) to immediately advise TEN of any material change in its business, including any change to its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the register maintained under the PPS Act in relation to any security interest created under or in connection with these Terms & Conditions;
- (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 TEN, lodge or serve a Financing Change Statement or an amendment demand in relation to any Security Interest created under or in connection with these Terms & Conditions; and



- (d) that the Equipment provided under these Terms & Conditions is not intended, and shall not be used, for personal, household or domestic purposes.

## 10. TEN's General Obligations

### 10.1 Non-Excludable Rights

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in a Supply Agreement and there are rights and remedies conferred on the Customer in relation to the provision of Supply Items which cannot be excluded, restricted or modified by agreement (Non-excludable Rights).

### 10.2 Disclaimer of Obligations

TEN disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights.

### 10.3 Limitation of Liability

TEN's Liability for a breach of any implied condition or warranty in relation to Supply Items which cannot lawfully be excluded, or any additional warranty which may be provided for in these Terms & Conditions, is limited (but only to the extent permitted by law) at TEN's discretion to:

- (a) replacing the Supply Item or supplying an equivalent Supply Item;
- (b) paying the Cost of replacing the Supply Item or acquiring an equivalent Supply Item; or
- (c) repairing the Supply Item or paying the Cost of repairing the Supply Item.

### 10.4 Indirect Loss

Notwithstanding any other provision of these Terms & Conditions, TEN is in no circumstances (whatever the cause) liable in contract, tort (including without limitation, negligence) or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased Costs or expenses;
- (b) any Loss of profit, revenue, business, contracts or anticipated savings;
- (c) any Damage resulting from a Claim by a third party; or
- (d) any special, indirect or consequential Loss of any nature whatsoever.

### 10.5 Force Majeure

TEN will have no Liability to the Customer in relation to any Claims caused by the failure of TEN to supply any Supply Item as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, pandemic, the inability of TEN's normal suppliers to supply necessary parts or any other matter beyond TEN's control.

## 11. Customer's General Obligations

### 11.1 Customer's Indemnity

The Customer indemnifies TEN, its directors, officers, employees, contractors, representatives, agents and its associated entities and keeps each of them indemnified, from and against any Claims and Damages incurred or suffered directly or indirectly from or in connection with:

- (a) any breach of a Supply Agreement or any of the Customer's warranties by the Customer;
- (b) the termination of a Supply Agreement because of a breach by the Customer;
- (c) any wilful, unlawful or negligent act or omission by the Customer;
- (d) Damage to the Equipment by any cause;
- (e) any Damage to real or personal property of the Customer, caused by or contributed to by TEN;
- (f) any Claim against TEN in relation to the Equipment or the use or operation of it;
- (g) any injury to or death of a natural person and any Damage to a third party's real or personal property caused or contributed to by TEN or the Equipment;
- (h) any Claim by a third party arising directly or indirectly out of a breach of a Supply Agreement by the Customer; and
- (i) any other thing in relation to which the Customer has assumed the risk or Liability,

except to the extent that any Damage is caused by the wilful, unlawful or negligent actions of TEN.

## 12. Amendments to Terms & Conditions

### 12.1 Amendments to Terms & Conditions

TEN may amend or replace these Terms & Conditions or any part of these Terms & Conditions by giving the Customer written notice of the amendment at any time.

### 12.2 Time Amendments Effective

If TEN notifies the Customer of an amendment to these Terms & Conditions under clause 12.1:

- (a) any amendments will take effect immediately for any Supply Agreement which comes into existence after notification of the amendment is given; and

- (b) the Customer's acceptance of any new Quote will represent the Customer's acceptance of the Terms & Conditions as amended.

## 13. Termination

### 13.1 Termination of Supply Agreement with Notice

Without prejudice to any other remedies TEN may have against the Customer, TEN may terminate a Supply Agreement by giving the Customer 30 days' written notice of the termination.

### 13.2 Termination for Event of Default

TEN may terminate a Supply Agreement immediately if:

- (a) the Customer:
  - (1) suffers an Insolvency Event; or
  - (2) commits any other breach of that Supply Agreement;
- (b) any Equipment which TEN owns, or otherwise has an interest in:
  - (1) is subject to any threatened or levied distress or execution;
  - (2) is lawfully seized or impounded; or
  - (3) is not adequately insured or becomes uninsured in circumstances where the Customer is required to maintain an insurance policy; or
- (c) any other event or series of events (whether related or not) occurs, including without limitation any change in the financial condition of the Customer, which has or is likely to have a material adverse effect upon:
  - (1) the enforceability of a Supply Agreement; or
  - (2) the ability of any party to comply with its Obligations under it.

### 13.3 Without Prejudice to Rights

Termination of a Supply Agreement will be without prejudice to the rights of a party accrued as at the date of termination.

### 13.4 Surviving Rights and Obligations

The provisions relating to indemnities, confidential information, governing law and jurisdiction, and the creation of any Security Interest in favour of TEN, survive termination of a Supply Agreement until each of those Obligations have been completely discharged.

## 14. Rights upon Termination

### 14.1 General Rights

Without prejudice to any other remedies TEN may have, if at any time an Event of Default occurs, TEN reserves the right to:

- (a) charge interest at the Australia and New Zealand Banking Group Limited's 'Indicator Interest Rate' plus 2% calculated on a daily basis on amounts not paid within the payment terms;
- (b) remove any Equipment from the Customer's possession;
- (c) cease providing any Services to the Customer; and
- (d) charge the Customer for any Damage incurred by TEN as a result of the Customer's failure to pay to TEN all amounts owing by the Customer to TEN when due, including any debt collection and legal Costs incurred in enforcing payment on a solicitor and own client basis.

### 14.2 Consequences of Termination

If TEN terminates these Terms & Conditions because of an Event of Default:

- (a) any amount invoiced by TEN to the Customer becomes immediately due and payable; and
- (b) the Customer agrees to indemnify TEN against all Damage (including solicitor and own client Costs, the Costs of any debt recovery agents and other commercial agent commissions, freight, insurance, Loss of profit and interest) incurred by TEN as a result of the Customer's default.

### 14.3 Rectify the Customer's Default

TEN may do anything which should have been done by the Customer under a Supply Agreement but which the Customer has not done or which TEN reasonably considers that the Customer has not done properly.

## 15. Dispute Resolution

- (a) If the Customer disagrees with or is otherwise dissatisfied with any Supply Item, Invoice or any other act or determination by TEN under these Terms & Conditions (**Disputed Matter**), the Customer must provide a notice of that dispute (**Dispute Notice**) which sets out:

- (1) the details of the Disputed Matter; and
- (2) the basis for the Customer disputing each Disputed Matter.

- (b) The Customer must submit the Dispute Notice within:

- (1) the time period specified under the relevant Terms & Conditions; or
- (2) if no timeframe is specified, five Business Days of the Customer becoming aware of the Disputed Matter.

- (c) If the Customer does not provide a Dispute Notice within the timeframe set out in clause 15(b), the Customer will be taken to have waived its right to make any Claim in respect of the Disputed Matter.

- (d) If a Dispute Notice is given to TEN in accordance with clause 15(a), then TEN must give to the Customer a written response to each of the Disputed Matters as set out in the Dispute Notice within ten Business Days (**Response**).
- (e) If TEN and the Customer have not resolved the Disputed Matters within ten Business Days of the Response being delivered in accordance with clause 15(d), any party may request that the dispute be referred to mediation by providing notice to the other party in writing.
- (f) If the parties fail to agree as to the appointment of a mediator within ten Business Days of the notice provided under clause 15(e), then either party may apply to the Queensland Law Society Inc. to appoint a mediator.
- (g) All costs involved in mediation must be paid equally by the parties.
- (h) The parties must attend the mediation and try to resolve the dispute.
- (i) A party may not start court proceedings in relation to a dispute until it has exhausted the procedures in this clause, but neither party is prevented from applying to a court at any stage for urgent injunctive or other relief.
- (j) Nothing in this clause prevents any party from exercising any of its rights or permits any party to not comply with any Obligations under these Terms & Conditions.

## 16. GST

- (a) Unless expressly stated to the contrary all amounts expressed in these Terms & Conditions or any Quote are exclusive of GST.
- (b) If a party (**Recipient**) is obliged pursuant to the GST Law to pay an amount of GST in respect of a Taxable Supply made by another party (**Supplier**) pursuant to a Supply Agreement, the Recipient shall pay the Supplier on demand that amount of GST upon production of a valid Tax Invoice by the Supplier in addition to the moneys otherwise payable by the Recipient to the Supplier on account of that Taxable Supply.

## 17. Notices

### 17.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 17.4 or to any other address as the recipient may have notified the sender; and
- (c) signed by the sender or by an Authorised Officer of the sender.

### 17.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail;
- (d) sent by electronic mail to the party's electronic mail address; or
- (e) sent electronically using any portal or other submission system on the party's website.

### 17.3 Time

If a notice is sent or delivered in the manner provided in clause 17.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
  - (1) in Australia to an Australian address, the fourth Business Day after posting; or
  - (2) in any other case, on the tenth Business Day after posting; or
- (c) electronic mail or website submission, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

### 17.4 Initial Details

The addresses and numbers for service are initially:

- (a) for TEN, those set out in the Quote; and
- (b) for the Customer, those set out in the Customer Details.

### 17.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

## 18. Governing Law and Jurisdiction

### 18.1 Governing Law

Each Supply Agreement is governed by and construed in accordance with the laws of Queensland.

### 18.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to

any proceedings which may be brought at any time relating to a Supply Agreement; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.2(a).

## 19. Miscellaneous

### 19.1 Legal Advice

Each party acknowledges that it:

- (a) has obtained, or has had the opportunity to obtain, independent legal advice in relation to the meaning and effect of these Terms & Conditions; and
- (b) fully understands and comprehends the Obligations imposed on it by these Terms & Conditions.

### 19.2 Exercise Rights

A single or partial exercise or waiver by a party of any right under or relating to a Supply Agreement will not prevent any other exercise of that right or the exercise of any other right.

### 19.3 Merger

If the Liability of a party to pay money under a Supply Agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under these Terms & Conditions and that fixed by or payable under that deed, judgment, order or other thing.

### 19.4 Fairness of Agreement

The parties acknowledge that all of the provisions contained in these Terms & Conditions are fair and reasonable in the circumstances.

### 19.5 Moratorium Legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under a Supply Agreement is excluded to the extent permitted by law.

### 19.6 Remedies Cumulative

The rights and remedies under a Supply Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### 19.7 Severability

If a provision of a Supply Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of these Terms & Conditions has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

### 19.8 Further Assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to a Supply Agreement and the transactions contemplated by it.

### 19.9 Indemnities

Subject to these Terms & Conditions, the indemnities in these Terms & Conditions are continuing Obligations, independent from the other Obligations of the parties under a Supply Agreement and continue after that Supply Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under a Supply Agreement.

### 19.10 Assignment

- (a) TEN may assign or otherwise deal with any part of its rights or Obligations under a Supply Agreement by giving the Customer written notice of that assignment or dealing.
- (b) The Customer shall not assign or otherwise deal with any part of its rights or Obligations under a Supply Agreement without the prior written consent of TEN.

### 19.11 Waivers

Any waiver of a particular breach of any express or implied provision of a Supply Agreement shall not constitute a waiver of any other breach of such provision or of any other express or implied provision.

### 19.12 Time

Time is of the essence in respect of any Obligation under a Supply Agreement.

### 19.13 Counterparts

The documents comprising a Supply Agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart may deliver it to, or exchange it with, another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party.

### 19.14 Confidentiality

- (a) The Customer may not disclose the contents or terms of a Supply Agreement or any information or documents received by it in connection with the

negotiation of a Supply Agreement or pursuant to the provisions of a Supply Agreement without the prior consent of TEN except to the extent that:

- (1) disclosure is expressly permitted by the documents comprising that Supply Agreement;
  - (2) the information is available to the public generally (except as a result of a previous breach of this clause);
  - (3) the Customer is required to make the disclosure by law; or
  - (4) the disclosure is made on a confidential basis to the representatives or professional advisers of that party for the purpose of obtaining professional advice.
- (b) The Customer hereby authorises TEN to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the *Privacy Act 1988* (Cth) and the Privacy Principles outlined in the *Privacy Amendment Act 2012* (Cth), to persons and/or legal entities who are a solicitor or any other professional consultant engaged by TEN, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings.
- (c) Subject to the Privacy Principles outlined in the *Privacy Amendment Act 2012* (Cth), the Customer further authorises TEN to collect, retain, record, use and disclose personal information about the Customer for the marketing of the Equipment and Services.

#### 19.15 Costs

Unless expressly stated otherwise, each party shall be responsible for all its own Costs incurred in the negotiation and performance of its Obligations pursuant to a Supply Agreement including, without limitation, legal Costs.

#### 19.16 Whole Agreement

- (a) The documents comprising a Supply Agreement supersede all prior representations, arrangements, understandings and agreements between the parties and represent the entire complete and exclusive understanding and agreement between the parties relating to the subject matter of that Supply Agreement.
- (b) The parties acknowledge and agree that they have not relied on any written or oral representation, arrangement, understanding or agreement not expressly set out or referred to in the documents comprising a Supply Agreement.

#### 19.17 Non-Waiver

Failure by TEN to enforce or delay in enforcing any right or provision of a Supply Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed in writing.

## 20. Warranties of the Parties

Both parties represent, warrant and agree that:

- (a) they have the right, power and authority to enter into and perform their respective Obligations in accordance with these Terms & Conditions;
- (b) all corporate and other necessary action has been taken by each of them to authorise the signing and performance of these Terms & Conditions; and
- (c) each Supply Agreement is valid and legally binding on them in accordance with these Terms & Conditions.

## Schedule 1 – Equipment Sale

### SPECIAL CONDITIONS

#### 21. Quotes

In addition to the requirements set out in any other provision in these Terms & Conditions, a Quote for an Equipment Sale Agreement may set out:

- (a) the price payable for each item of Sale Equipment (**Purchase Price**);
- (b) if the Sale Equipment is to be collected by the Customer, the location of the depot from which it will be collected (**Collection Depot**); and
- (c) if shipping or transport of the Sale Equipment is to be organised by TEN, any details necessary for TEN to arrange the shipping or transport of the Sale Equipment (**Delivery Requirements**).

#### 22. Supply Charges

- (a) The Supply Charge for each item of Sale Equipment will be the Purchase Price provided for that Supply Item in the relevant Quote.
- (b) A minimum order value of \$250.00 applies to all orders for Sale Equipment. TEN is entitled to charge a \$50.00 surcharge for all orders for Sale Equipment which are less than \$250.00.

#### 23. Non-Stock Line Equipment

If the Supply Item is a kind of Sale Equipment not ordinarily stocked by TEN then notwithstanding any other term of the Supply Agreement, TEN may at its sole and absolute discretion require the Customer to pay all or a portion of the Purchase Price for the Supply Item by non-refundable Pre-Payment.

#### 24. Sale Equipment

##### 24.1 Retention of Title

Until the Customer has paid and discharged all Charges owing to TEN pursuant to the relevant Supply Agreement:

- (a) legal and equitable ownership of the Sale Equipment shall remain with TEN; and
- (b) the relationship between the parties shall be fiduciary and the Customer shall hold the Sale Equipment as bailee for TEN.

##### 24.2 Risk

The Customer assumes all risks and Liability in relation to the Sale Equipment and the use, maintenance, repair and storage of it (including Liability for injury to any person or Damage to any property, whether direct or consequential) from the time at which the Sale Equipment leaves the Collection Depot (regardless of whether it is collected by the Customer or TEN organises shipping or transport).

##### 24.3 On-Sale

- (a) Until such time as ownership of the Sale Equipment passes to the Customer, TEN authorises the Customer to on sell the Sale Equipment but as an agent of TEN (by bona-fide sale in the ordinary course of business).
- (b) Where the Sale Equipment has been on-sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Sale Equipment upon trust for TEN and to account to TEN for these proceeds until all Liabilities under the relevant Supply Agreement have been discharged.
- (c) The Customer shall not represent to any parties that it is in any way acting for TEN and TEN will not be bound by any contracts with third parties to which the Customer is a party.

##### 24.4 Returns

- (a) Subject to clause 4.4(b), the Customer may return Sale Equipment to TEN for a refund or credit (excluding any shipping or transport Costs) provided that:
  - (1) the Quote in relation to the Sale Equipment provides that the Sale Equipment is refundable;
  - (2) the Sale Equipment is returned within 14 days from the date of purchase;
  - (3) the Sale Equipment is in its original condition;
  - (4) the Customer is responsible for all costs associated with transport of the Sale Equipment to facilitate its return to TEN;
  - (5) the Sale Equipment remains at the Customer's risk until received by TEN; and
  - (6) TEN may at its absolute discretion charge a restocking fee of 20% of the Purchase Price.
- (b) The Customer is not entitled to return Sale Equipment that has been customised or modified by TEN in accordance with the Customer's specifications prior to delivery or modified by the Customer following delivery.

##### 24.5 Repossession

If an Event of Default occurs, then TEN may, without prejudice to any other remedies it may have, repossess any Sale Equipment delivered to the Customer on any account which has not been paid for in accordance with the relevant Supply Agreement herein and commence proceedings to recover the balance of any monies owing to TEN by the Customer.

##### 24.6 Specific Rights if Default caused by Insolvency Event

- (a) If an Insolvency Event occurs in respect of a Customer, without prejudice to any other rights TEN may have the Customer by receiving delivery of any Sale Equipment authorises TEN to enter the Customer's premises (or the premises of any associated company or agent where the Sale Equipment is located) without Liability for trespass or any resulting Damage to conduct a stock check of unpaid Sale Equipment and retake possession of that Sale Equipment.
- (b) TEN may keep or re-sell any of the Sale Equipment repossessed and will account to the Customer for any surplus from the net proceeds of sale of the Sale after deducting all amounts owing in respect of the repossessed Sale Equipment.
- (c) While TEN has legal and equitable ownership of the Sale Equipment, the Customer must store the Sale Equipment so that it is clearly distinguishable from Equipment of a similar nature in the Customer's possession and cross referenced to particular Invoices so that the Sale Equipment is clearly identifiable as the property of TEN.



## 25. Warranty for Sale Equipment

### 25.1 Manufacturer Warranty

To the extent that the Sale Equipment is the subject of a warranty provided by the manufacturer of the Sale Equipment (Manufacturer Warranty), TEN will do all things reasonably necessary to ensure that the Customer obtains the benefit of the Manufacturer Warranty during the period of time for which the Manufacturer Warranty applies under the terms of the Manufacturer Warranty.

### 25.2 Warranty for New Sale Equipment

If the Sale Equipment is sold in new condition, the Manufacturer Warranty is the only warranty provided for that Sale Equipment.

### 25.3 Warranty for Used Sale Equipment

If the Sale Equipment is sold in used condition, the Customer agrees that:

- (a) TEN makes no warranties in relation to the Sale Equipment (and all statutory warranties in relation to the Sale Equipment are excluded to the fullest extent permitted by law); and
- (b) the Customer acquires the Sale Equipment on an 'as is where is' basis.

### 25.4 Customer's Acknowledgements

The Customer agrees that:

- (a) before accepting the relevant Quote, it has had the opportunity to examine any Sale Equipment to satisfy itself as to the condition, suitability and specifications of the Sale Equipment and its fitness for the Customer's purposes;
- (b) neither TEN nor anyone on its behalf has given any warranty or made any representation to the Customer as to the quality, fitness for any particular purpose, suitability or condition of the Sale Equipment;
- (c) the Sale Equipment may differ from the images or description stated on the website of TEN or its catalogues, product datasheets and advertising documents and TEN is not liable for any Loss, Claim or Liability associated with any difference between the Sale Equipment and any description of it; and
- (d) all the Customer's Obligations under the relevant Supply Agreement will continue despite any defect in, or breakdown of, the Sale Equipment or any other matter concerning the Sale Equipment.

## 26. Collection or Delivery

### 26.1 Delivery of Sale Equipment

Unless otherwise specified in the Quote, TEN is responsible for delivering or transporting any Sale Equipment to be supplied by TEN under a Supply Agreement, provided always that:

- (a) unless otherwise specified in the Quote, the Customer is responsible for all delivery and transport Costs in relation to any Sale Equipment supplied by TEN;
- (b) risk in the Sale Equipment passes to the Customer on delivery;
- (c) TEN shall use its best endeavours to have the Sale Equipment delivered by the agreed time, but will not be liable to the Customer for late delivery, non-delivery or any Damage occasioned to the Customer for such late or non-delivery;
- (d) any delivery date stipulated in the Quote or otherwise provided by TEN is an estimate only and the time for delivery of the Sale Equipment shall not be regarded as of the essence;
- (e) where delivery or collection of the Sale Equipment requires access through private property, all arrangements and costs associated with such access are the sole responsibility of the Customer;
- (f) if the Customer fails to notify TEN within SEVEN days of the estimated time of delivery that it has not received the Sale Equipment, the Customer shall be deemed to have received the Sale Equipment and shall be liable for any payments in relation to the Sale Equipment; and
- (g) under no circumstances may the Customer deny a signature evidencing receipt of the Sale Equipment by it or any employee, agent or carrier utilised or employed by the Customer.

### 26.2 Collection of Sale Equipment

Where a Quote contemplates that the Customer is responsible for collecting or transporting any Sale Equipment to be supplied by TEN under a Supply Agreement:

- (a) unless otherwise specified in the Quote, the Customer is responsible for any shipping and transport Costs in relation to any Sale Equipment supplied by TEN;
- (b) the Customer must collect the Sale Equipment during TEN's normal operating hours from the Collection Depot specified in the Quote or as otherwise communicated by TEN; and
- (c) notwithstanding that an approximate date may be stipulated in a Quote for the availability of the Sale Equipment for collection, the date for collection of the Sale Equipment shall not be regarded as of the essence.

### 26.3 Cost of Collection or Delivery

In addition to the Supply Charges specified in the Quote, the Customer shall be liable for all Costs associated with collection or delivery of Sale Equipment, including but not limited to:

- (a) travel time charges from depot to depot, assessed according to time and distance involved;
- (b) shipping and transport charges for delivery and collection of Sale Equipment, and waiting times and delays caused by the Customer;
- (c) any Damage to the Sale Equipment during collection or delivery;
- (d) any mobilisation or de-mobilisation costs (including labour, travel and accommodation costs incurred by TEN); and
- (e) tolls, levies, or like charges paid or payable by TEN to any Government Body in relation to collection or delivery of the Sale Equipment.

## Schedule 2 – Equipment Hire

### SPECIAL CONDITIONS

#### 1. Quotes

In addition to the requirements set out in any other provision in these Terms & Conditions, a Quote for an Equipment Hire Agreement may set out:

- (a) the location of the site where the Hire Equipment will be used by the Customer (**Hire Site**);
- (b) if the Hire Equipment is to be collected by the Customer, the location of the depot from which it will be collected (**Collection Depot**);
- (c) if shipping or transport of the Hire Equipment is to be organised by TEN, any details necessary for TEN to arrange the shipping or transport of the Hire Equipment (**Delivery Requirements**);
- (d) the initial period of time (if any) for which the Customer agrees to hire each item of Hire Equipment (**Initial Hire Period**);
- (e) the minimum amount of time for which the Customer agrees to hire each item of Hire Equipment (**Minimum Hire Period**) which will be not less than one week; and
- (f) the rate payable for Hire Equipment per week of hire (**Weekly Rate**).

#### 2. Supply Charges

##### 2.1 Supply Charge for Hire Equipment

- (a) The Supply Charge for each item of Hire Equipment will be calculated by multiplying the number of weeks for which that Hire Equipment was hired during the Invoice Period by the Weekly Rate for that item contained in the relevant Quote.
- (b) For the avoidance of doubt, the Weekly Rate for each item of Hire Equipment is not prorated for part weeks during which any Hire Equipment is hired.

##### 2.2 Amendments to Weekly Rate

The Weekly Rate for any Hire Equipment may be adjusted by TEN not more than once each calendar month by giving the Customer written notice of those changes, with any adjustments taking effect immediately.

##### 2.3 Cancellation Fee

Where a Customer cancels the Hire Equipment less than one week before the delivery date stipulated in any Quote, TEN may at its sole and absolute discretion charge the Customer a cancellation fee equal to the Weekly Rate for the relevant Hire Equipment.

#### 3. Hire Equipment

##### 3.1 Title

The Hire Equipment shall remain the property of TEN at all times. The Customer is not entitled to sell, transfer, mortgage, charge or encumber in any way the Hire Equipment nor (unless otherwise agreed in writing) part with possession of the Hire Equipment or assign the benefit of the Equipment Hire Agreement.

##### 3.2 Risk

The Customer assumes all risks and Liability in relation to the Hire Equipment and the use, maintenance and storage of it (including Liability for injury to any person or Damage to any property, whether direct or consequential) during the applicable Hire Period.

##### 3.3 Initial Hire Period

- (a) If an Initial Hire Period applies for any Hire Equipment, the Customer agrees to Hire that Hire Equipment until the expiration of the Initial Hire Period.
- (b) The Initial Hire Period may be extended with TEN's written consent.

##### 3.4 Hire Period

The period of hire for an item of Hire Equipment (**Hire Period**):

- (a) runs from the time at which the Hire Equipment leaves the Collection Depot (regardless of whether it is collected by the Customer or TEN organises shipping or transport); and
- (b) ends when the Hire Equipment is returned by the Customer to TEN in accordance with clause 7.2(d) (regardless of whether it is collected by TEN or the Customer organises shipping or transport).

### 3.5 Minimum Hire Period

If a Minimum Hire Period applies for any Hire Equipment, the Customer agrees to:

- (a) hire that Hire Equipment until the expiration of the Minimum Hire Period; and
- (b) continue to pay the Weekly Rate for that Hire Equipment until the end of the Minimum Hire Period, irrespective of whether the Hire Period ends prior to the Minimum Hire Period expiring.

### 3.6 Maintenance

- (a) The Customer acknowledges that all Hire Equipment is hired on a 'dry hire' basis.
- (b) The Customer must ensure that Hire Equipment is inspected on a daily basis.
- (c) Subject always to clause 4(b), the Customer must provide all fuel, oil, lubricating oil and grease, cleaning and other consumables required for the operation of the Hire Equipment.
- (d) The Customer is responsible for any Damage resulting from lack of lubrication or other normal servicing of the Hire Equipment such as supplying all fuel, oil and greases, cleaning and other consumables necessary for the operation, service and maintenance of the Hire Equipment.
- (e) TEN may impose additional Charges if the Customer fails to maintain the Hire Equipment or to adequately clean the Hire Equipment prior to returning it to TEN.
- (f) If the Hire Equipment breaks down or becomes unsafe to operate, the Customer must immediately stop operating the Hire Equipment and notify TEN as soon as reasonably practicable of the breakdown or the circumstances which make the Hire Equipment unsafe to operate.
- (g) If the Hire Equipment requires repair TEN will engage an authorised repairer and may at its sole and absolute discretion and for such period as determined by TEN replace the Hire Equipment with alternative Hire Equipment of a similar nature.

### 3.7 On-Hire of Equipment

The Customer must not in any way part with possession or relocate the Hire Equipment, nor assign the Equipment Hire Agreement without TEN's prior written consent.

### 3.8 Issues with Hire Equipment

If the Customer is not satisfied with the Hire Equipment the Customer must submit a Dispute Notice to TEN as soon as possible but in any event within 24 hours of that Hire Equipment being provided to the Customer.

## 4. Positive Obligations

During the Hire Period, the Customer must:

- (a) comply with the reasonable requirements of TEN relating to the Hire Equipment;
- (b) only use fuel, oil, lubricating oils and grease, cleaning and other consumables approved by TEN;
- (c) carry out the Pre-Start Checklist provided by TEN at the intervals and in the manner notified by TEN;
- (d) retain possession and control of the Hire Equipment and not sell, assign, pledge, mortgage, charge, lease, let on hire, part with possession of or otherwise dispose of or deal with the Hire Equipment or any part of it;
- (e) operate the Hire Equipment only in a proper and skilful manner and using Competent Personnel, and in accordance with any operating manual/s provided by TEN;
- (f) make all reasonable attempts to ensure that the use of the Hire Equipment complies with all work health and safety requirements in accordance with the laws of the state or territory in which the work is carried out;
- (g) ensure that any equipment or facilities of the Customer used in conjunction with the Hire Equipment are safe and without risks to health and safety when properly used;
- (h) provide such information, instruction, training and supervision as may be necessary to ensure that the Hire Equipment is operated, used and maintained without hazards or risks to health and safety, and provide evidence to TEN of same upon request;
- (i) provide any information in respect of the use of the Hire Equipment, including without limitation daily logs and condition monitoring information to TEN upon request;
- (j) comply with all laws and regulations relating to the Hire Equipment and the use, operation or possession of it;

- (k) use or keep the Hire Equipment only at the Hire Site or at such other place as TEN approves;
- (l) notify TEN immediately if any Hire Equipment is lost, stolen or otherwise Damaged;
- (m) be responsible for any Damage to the Hire Equipment if such Damage is caused by the Customer or any persons under the Customer's control;
- (n) at all times exercise due care to ensure that the Hire Equipment is only operated by approved Competent Personnel and for the purpose and within the capacity for which it was designed to be used;
- (o) take all reasonable precautions to prevent bodily injury or Damage to property and to comply with all statutory Obligations and by-laws and regulations imposed by any Government Body for the safety of persons and property as though the Customer was TEN; and
- (p) ensure that the Hire Equipment (including any item, article, document or thing supplied in conjunction with the Hire Equipment) is returned in the same condition as it was in at the commencement of the Hire Period (fair wear and tear excepted).

## 5. Negative Obligations

During the Hire Period, the Customer must not:

- (a) alter the Hire Equipment, make any modification or addition to it, install anything in or on it or remove anything in or from it without the prior written consent of TEN;
- (b) use the Hire Equipment for any purpose which is unlawful or which in TEN's reasonable opinion might endanger any person or the safety or condition of the Hire Equipment or prejudice TEN's interest in it; or
- (c) alter, make any additions to, deface or erase any identifying mark, insignia, signage, barcoding, plate or number on or in the Hire Equipment or in any other manner interfere with the Hire Equipment without the prior written consent of TEN.

## 6. TEN's Rights

### 6.1 Protection of TEN's Rights in Relation to Hire Equipment

TEN may at any time do anything (including taking any legal proceedings) which TEN considers desirable to protect or enforce its rights in relation to the Hire Equipment.

### 6.2 Equipment to be Returned in the Event of Termination

If an Equipment Hire Agreement is terminated prior to the end of the Hire Period:

- (a) TEN may retake possession of the Hire Equipment; or
- (b) if requested by TEN, the Customer must immediately return the Hire Equipment to TEN at the place TEN nominates, at the Customer's cost.

### 6.3 Inspection and Right of Entry of TEN

During the Hire Period, a person authorised by TEN may enter at all times on the Hire Site or other land or buildings in which any item of Hire Equipment is situated to:

- (a) inspect the condition of the Hire Equipment;
- (b) test or maintain the Hire Equipment;
- (c) determine whether the terms of the relevant Supply Agreement are being complied with; and
- (d) exercise the rights of TEN under a Supply Agreement.

### 6.4 Repossession

The Customer hereby irrevocably grants to TEN the right, at its sole discretion, to access the Customer's property and remove or repossess any Hire Equipment from the Customer if an Event of Default occurs.

### 6.5 Specific Rights if Default caused by Insolvency Event

- (a) If an Insolvency Event occurs in respect of a Customer, without prejudice to any other rights TEN may have the Customer by receiving delivery of any Hire Equipment authorises TEN to enter the Customer's premises (or the premises of any associated company or agent where the Hire Equipment is located) without Liability for trespass or any resulting Damage to retake possession of that Hire Equipment.
- (b) While TEN has legal and equitable ownership of the Hire Equipment, the Customer must store the Hire Equipment so that it is clearly distinguishable from Equipment of a similar nature in the Customer's possession and cross referenced to particular invoices so that the Hire Equipment is clearly identifiable as the property of TEN.

### 6.6 Customer's Acknowledgements

The Customer agrees that:

- (a) before accepting the relevant Quote, it had the opportunity to examine any Hire Equipment to satisfy itself as to the condition, suitability and specifications of the Hire Equipment and its fitness for the Customer's purposes;
- (b) neither TEN nor anyone on its behalf has given any warranty or made any representation to the Customer as to the quality, fitness for any particular purpose, suitability or condition of the Hire Equipment;



- (c) the Hire Equipment may differ from the images or description stated on the website of TEN or its catalogues, product datasheets and advertising documents and TEN is not liable for any Loss, Claim or Liability associated with any difference between the Hire Equipment and any description of it; and
- (d) all the Customer's Obligations under the relevant Supply Agreement will continue despite any defect in, or breakdown of, the Hire Equipment or any other matter concerning the Hire Equipment.

## 7. Collection or Delivery

### 7.1 Delivery of Hire Equipment

Unless otherwise specified in the Quote, TEN is responsible for delivering or transporting any Hire Equipment to be supplied by TEN under a Supply Agreement, provided always that:

- (a) unless otherwise specified in the Quote, the Customer is responsible for all delivery and transport Costs in relation to any Hire Equipment supplied by TEN;
- (b) the Hire Equipment is at the risk of the Customer during delivery and transport;
- (c) TEN shall use its best endeavours to have the Hire Equipment delivered by the agreed time, but will not be liable to the Customer for late delivery, non-delivery or any Damage occasioned to the Customer for such late or non-delivery;
- (d) any delivery date stipulated in any Quote or otherwise provided by TEN is an estimate only and the time for delivery of the Hire Equipment shall not be regarded as of the essence;
- (e) where delivery or collection of the Hire Equipment requires access through private property, all arrangements and costs associated with such access are the sole responsibility of the Customer;
- (f) if the Customer fails to notify TEN within seven days of the estimated time of delivery that it has not received the Hire Equipment, the Customer shall be deemed to have received the Hire Equipment and shall be liable for any payments in relation to the Hire Equipment; and
- (g) under no circumstances may the Customer deny a signature evidencing receipt of the Hire Equipment by it or any employee, agent of carrier utilised or employed by the Customer.

### 7.2 Collection of Hire Equipment

Where a Quote contemplates that the Customer is responsible for collecting or transporting any Hire Equipment to be supplied by TEN under a Supply Agreement:

- (a) unless otherwise specified in the Quote, the Customer is responsible for any shipping and transport Costs in relation to any Hire Equipment supplied by TEN;
- (b) the Customer must collect the Hire Equipment during TEN's normal operating hours from the Collection Depot specified in the Quote or as otherwise communicated by TEN;
- (c) notwithstanding that an approximate date may be stipulated in a Quote for the availability of the Hire Equipment for collection, the date for collection of the Hire Equipment shall not be regarded as of the essence;
- (d) Hire Equipment must be returned to the Collection Depot specified in the Quote or as otherwise communicated by TEN to the Customer, during TEN's normal operating hours; and
- (e) Additional Charges will apply for any Costs or time incurred by TEN transporting Hire Equipment to the Collection Depot in the event that the Customer fails to return the Hire Equipment in accordance with clause 7.2(d).

### 7.3 Cost of Collection or Delivery

In addition to the Supply Charges specified in the Quote, the Customer shall be liable for all Costs associated with the collection or delivery of Hire Equipment, including but not limited to:

- (a) travel time charges from depot to depot, assessed according to time and distance involved;
- (b) shipping and transport charges for delivery and collection of Hire Equipment, and waiting times and delays caused by the Customer;
- (c) any Damage to the Hire Equipment during collection or delivery;
- (d) any mobilisation or de-mobilisation costs (including labour, travel and accommodation costs incurred by TEN); and
- (e) tolls, levies, or like Costs paid or payable by TEN to any Government Body in relation to collection or delivery of the Hire Equipment.

## Schedule 3 – Service & Repair Agreement

### SPECIAL CONDITIONS

#### 1. Quotes

In addition to the requirements set out in any other provision in these Terms & Conditions, a Quote for a Service & Repair Agreement may set out:

- (a) a list of each individual item of Equipment requiring service, repair or refurbishment (**Service Equipment**);
- (b) a description of the service, repair or refurbishment required for each individual item of Service Equipment (**Required Service**);
- (c) if the Service Equipment is to be serviced, repaired or refurbished by TEN on-site, the location of the site where the Service Equipment is currently located (**Service Site**);
- (d) if the Service Equipment is to be delivered and collected by the Customer, the location of the depot from which it will be delivered and collected (**Service Depot**); and
- (e) if shipping or transport of the Service Equipment is to be organised by TEN, any details necessary for TEN to arrange the shipping or transport of the Service Equipment (**Delivery Requirements**).

#### 2. Supply Charge

- (a) The Supply Charges for the Required Service will be set out in the Quote.
- (b) In addition to the Supply Charges, all Required Services incur a \$100.00 (GST Exclusive) stripping fee which may be waived by TEN in its sole discretion.

#### 3. Completion of Required Services

##### 3.1 TEN's Obligations

TEN will perform and complete the Required Services:

- (a) as and to the extent set out in the Quote;
- (b) taking reasonable care and in a safe, thorough and professional manner; and
- (c) in accordance with all applicable laws, codes and standards.

##### 3.2 Time for performance of Required Services

- (a) Any date stipulated in the Quote for the completion of the Required Services is an estimate only and the time for completion of the Required Service shall not be regarded as of the essence.
- (b) TEN shall use its best endeavours to complete the Required Services by the agreed date but will not be liable to the Customer for late performance, non-performance or any Damage occasioned to the Customer for such late or non-performance.

##### 3.3 Customer's Obligations

The Customer warrants that any equipment or facilities provided by the Customer for use by TEN in the provision of Required Services under a Supply Agreement are safe and without risks to health and safety when properly used.

##### 3.4 Issues with Required Services

If the Customer is not satisfied with any work that has been undertaken by TEN as part of a Service & Repair Agreement, the Customer must submit a Dispute Notice to TEN as soon as possible but in any event within 24 hours of the relevant work being undertaken.

#### 4. Collection or Delivery

##### 4.1 Delivery of Service Equipment

Unless otherwise specified in the Quote, TEN is responsible for delivering or transporting any Service Equipment, provided always that:

- (a) unless otherwise specified in the Quote, the Customer is responsible for all delivery and transport Costs in relation to Service Equipment;
- (b) risk in the Service Equipment passes to the Customer on delivery;
- (c) TEN shall use its best endeavours to have the Service Equipment delivered by the agreed time, but will not be liable to the Customer for late delivery, non-delivery or any Damage occasioned to the Customer for such late or non-delivery;
- (d) any delivery date stipulated in the Quote or otherwise provided by TEN is an estimate only and the time for delivery of the Service Equipment shall not be regarded as of the essence;
- (e) where delivery or collection of the Service Equipment requires access through private property, all arrangements and costs associated with such access are the sole responsibility of the Customer; and
- (f) under no circumstances may the Customer deny a signature evidencing receipt of the Service Equipment by it or any employee, agent of carrier utilised or employed by the Customer.

##### 4.2 Collection of Service Equipment

Where a Quote contemplates that the Customer is responsible for collection or delivery of Service Equipment:

- (a) unless otherwise specified in the Quote, the Customer is responsible for any shipping or transport Costs in relation to Service Equipment;
- (b) the Customer must collect or deliver the Service Equipment during TEN's normal operating hours to the Service Depot specified in the Quote or as otherwise communicated by TEN; and
- (c) notwithstanding that an approximate date may be stipulated in a Quote for the availability of the Service Equipment for collection, the date for collection of the Service Equipment shall not be regarded as of the essence.

#### 4.3 Cost of Collection or Delivery

In addition to the Supply Charges specified in the Quote, the Customer shall be liable for all Costs associated with collection and delivery of Service Equipment and performance of the Required Services, including but not limited to:

- (a) travel time charges from depot to depot, assessed according to time and distance involved;
- (b) shipping and transport charges for delivery and collection of Service Equipment, and waiting times and delays caused by the Customer;
- (c) where a Quote contemplates that the Customer is responsible for collection or delivery of Service Equipment, any Damage to the Service Equipment during collection or delivery;
- (d) any mobilisation or de-mobilisation costs (including labour, travel and accommodation costs incurred by TEN);
- (e) tolls, levies, or like charges paid or payable by TEN to any Government Body in relation to collection or delivery of the Service Equipment; and
- (f) any consumables, parts and labour utilised by TEN in the performance of the Required Services.

## Schedule 4 - Training Agreement

### SPECIAL CONDITIONS

#### 1. Quotes

In addition to the requirements set out in any other provision in these Terms & Conditions, a Quote for a Training Agreement may set out:

- (a) the price payable for each Training Session, including the price for any training material to be provided (**Session Price**);
- (b) the location at which the Training Sessions are to be performed (**Site**);
- (c) a list of the facilities that must be available at the Site (**Facilities**); and
- (d) a list of each individual trainee who will be attending at the Training Session (**Trainees**).

#### 2. Supply Charges

##### 2.1 Supply Charge for Training Sessions

The Supply Charge for each Training Session will be calculated by multiplying the number of Training Sessions provided by TEN during the Invoice Period by the Session Price specified in the Quote.

##### 2.2 Travel and Accommodation

In addition to the Supply Charge, the Customer shall be liable for all travel and accommodation Costs incurred by TEN in the performance of the Training Agreement.

#### 3. Training Sessions

##### 3.1 Maximum Number of Trainees

No more than four Trainees may attend any Training Session.

##### 3.2 Personal Protective Equipment

- (a) The Customer must provide each Trainee with all personal protective equipment deemed reasonably necessary by TEN including but not limited to safety helmets, safety boots, hi-visibility clothing, gloves and safety glasses.
- (b) TEN may in its sole and absolute discretion refuse to provide the Training Session to any Trainee who it reasonably considers has not been appropriately outfitted by the Customer with personal protective equipment.

##### 3.3 TEN's Obligations

- (a) TEN will perform the Training Sessions:
  - (1) taking reasonable care and in a safe, thorough and professional manner; and
  - (2) in accordance with all applicable laws, codes and standards.
- (b) TEN warrants that it holds all relevant authorisations required by law to provide the Training Sessions.
- (c) TEN will issue certificates of competency to Trainees only where it is satisfied, in its sole discretion, that a Trainee has completed all necessary Training Sessions and achieved the requisite level of competency.

#### 3.4 Customer's Obligations

Where a Training Session under a Supply Agreement is to be performed at the Customer's Site:

- (a) the Customer must provide the Facilities, at the Customer's cost; and
- (b) the Customer warrants that any equipment or Facilities provided by the Customer for use by TEN in the provision of the Training Sessions are safe and without risks to health and safety when properly used.

#### 3.5 Issues with Training Sessions

If the Customer is not satisfied with any work that has been undertaken by TEN as part of a Training Agreement, the Customer must submit a Dispute Notice to TEN as soon as possible but in any event within 24 hours of the relevant Training Session.

<b>Organisation:</b>	
<b>ABN:</b>	
<b>Printed name:</b>	
<b>Position held:</b>	
<b>Date:</b>	
<b>Signature:</b>	

Issue Date: 01/07/2021