

Terms & Conditions of Supply of Equipment & Services

TERM

This Agreement will commence on the Commencement Date and will terminate at the end of the Term unless terminated earlier in accordance with the terms of this Agreement and the attached Schedule 1.

ENGAGEMENT:

1. The Supplier represents that it has the experience and expertise to carry out the supply of Equipment and Services subject to the terms of this Agreement.
2. The Purchaser engages the Supplier to provide the Equipment and Services to the Purchaser, and the Supplier agrees to provide the Equipment and Services to the Purchaser, in accordance with the terms of this Agreement.
3. This Agreement comprises the entire Agreement between the Supplier and the Purchaser. If there is any conflict or inconsistency between the provisions of this Agreement and any provisions of any of the Purchaser's documents, then the provisions of this Agreement will take precedence.

APPLICABLE LAW:

4. This Agreement and the rights and obligations of the parties hereto shall be construed in accordance with and be governed by the laws applicable in the State. Each of the parties **hereto hereby agrees to the Alternative Dispute Resolution Clause**. Any legal action or proceedings with respect to their legal obligations under this Agreement shall be brought in the State designated in Schedule 1 of this Agreement and each of the parties hereby submit to the jurisdiction of that State.

PRICE:

5. The Supplier's written quote supersedes any verbal quotes, is GST exclusive, and is only valid for up to thirty (30) days; unless the Supplier terminates the quote by written notice.
6. For stock items, the price quoted will remain firm providing delivery is made within one (1) month from the quoted delivery date. If delivery is delayed at the Purchaser's request beyond one (1) month the Supplier reserves the right to amend the price/s to that/those ruling in the Supplier's standard price list current to the date of delivery.
7. For non-stock items, the price is based on the Supplier's prices, freight rates, marine and war risk insurance, duty and primage and where applicable GST ruling at the date of this quotation.

8. The Supplier's quoted price is based on (if applicable), the rates of currency exchange at the time of the quote subject to the Supplier's right to adjust the quote to the Westpac selling rate at the applicable currency rate of exchange on the day of invoicing to you. This will only be applicable where delivery delays are imposed by the Purchaser.
9. Prior to commencement of any procurement or manufacturing activities, if between this date and the date on which the Equipment is delivered, any variation occurs in any of those charges, which affect the cost of the goods, the Supplier reserves the right to amend prices through written advice and the Purchaser agrees to pay the cost of such variations.

TERMS OF PAYMENT INCLUDING CANCELLATIONS AND TERMINATIONS:

10. Subject to prior Credit Approval, the terms of payment outlined in Schedule 1 will apply.
11. The Supplier retains sole ownership in the Equipment supplied until payment is received in full. Title to the Equipment passes to the Purchaser when the Purchaser has fully paid the amount due. If the Purchaser defaults in payment, the Purchaser agrees to grant the Supplier unrestricted right of entry to the Supplier's premises to reclaim any of the Supplier's Equipment.
12. The Supplier reserves the right to place the Purchaser's order on stop supply until the account is paid in full. Interest on overdue accounts will accrue at the daily rate of 10% per annum from the due date of payment.
13. The Purchaser's purchase order for equipment and/or services must be in writing and, if applicable, accompanied by the appropriately completed Equipment Schedule/Product Data Sheet with quotation reference and subject to the Supplier's purchase order acceptance policy.
 - a) The Purchaser's purchase order shall be accepted unless the Supplier provides the Purchaser with a written or verbal notice of non-acceptance or variation within two (2) working days of receipt of the Purchaser's purchase order.
14. The Purchaser will pay on a full indemnity basis the Supplier's legal costs and disbursements in recovery from the Purchaser of any overdue default payment.
15. The Purchaser may only cancel the purchase order, with the Supplier's prior written consent; and in doing so, agrees to pay the Supplier at the date of cancellation:
 - a) A minimum cancellation charge of 20% of the net sales price.
 - b) A restocking fee where applicable.
 - c) Any other monetary loss incurred by the Supplier.

16. The Supplier may terminate this Agreement if the Purchaser becomes bankrupt, insolvent, enters into an arrangement with creditors, suffers a receiver to be appointed or being a body corporate is liquidated or is in the process of liquidation.

SPECIFICATION CHANGES:

17. Changes from the original specifications on which an accepted quotation or order is based will not be accepted unless requested by the Purchaser in writing, and the Supplier accepts in writing, provided if such change increases the cost of any product including but not limited to the actual component costs and expenses incurred in modifying a partially or completely manufactured item, such increase in cost and expenses shall be in addition to the original accepted price.

WAIVER:

18. The Purchaser must claim for shortages, incorrect equipment or poor-quality work in writing within fourteen (14) days after supply of the Equipment or Services and failure to give such notice shall be an acceptance of the Equipment and Services and waiver by the Purchaser of all such claims. No liability will be accepted by the Supplier for any such claims made after the expiration of 14 days from supply of the Equipment and Services.

ADDITIONAL GOODS AND SERVICES:

19. At any time during this Agreement, the Purchaser may request that the Supplier supply additional Equipment or Services. The Supplier will provide a written variation (if any) which could apply to the additional Price for additional Equipment or Services.
20. The Supplier offers an after sale "service agreement" to provide customers with on-going maintenance for all Equipment purchased.
21. Emergency call-outs are responded to as soon as possible however first priority is always afforded to "service agreement" customers.

DELIVERIES AND DELAYS:

22. All delivery times quoted are estimates. The Supplier will make reasonable endeavours to meet quoted delivery times but will not be liable for any damage caused by delays beyond the Supplier's control, including without limitation, fire, act of God, strikes, acts by the Purchaser or restrictions by civil or military authority. In the event of such delays the date of delivery shall be extended for a period equal to the time lost.
23. Risk in the Equipment passes to the Purchaser on delivery of the Equipment to the nominated delivery point.
24. Unless delivery is specifically included in Schedule 1, the Supplier is not responsible for loss or damage caused in delivery.

25. No penalty clause in any specification or order from the Purchaser will be binding, unless approved by the Supplier's Company Officer in writing and following the execution of the alternative dispute resolution clause.

INSTALLATION AND SERVICES:

26. Where the Supplier is required under a contract for the service of Equipment or for the supply of Equipment to install the equipment at nominated premises or sites, the Purchaser shall:
 - a) Advise the Supplier prior to installation of site requirements for the purpose of safety inductions;
 - b) provide the Supplier with unimpeded access to any facilities or equipment on premises or on-site for the purposes of such service and installation.
 - c) Accept that should the Supplier's technicians or contractors arrive at the Purchaser's site as arranged; if the Purchaser cancels or postpones without prior 48 hours confirmed verbal or written notice, the Purchaser shall pay all the Supplier's travel related expenses including but not limited to technician travel labour, service vehicle kilometre charges, air or ferry fares, hire car and accommodation expenses or any other expenses incurred.
 - d) The Supplier shall be responsible for all necessary building permits and council approvals.

CHAIN OF RESPONSIBILITY:

27. The Supplier will ensure that the Supplier, and each member of the Supplier's Personnel, complies with all laws, approvals and good operating practices relating to compliance with and management of Chain of Responsibility.

ALTERNATIVE DISPUTE RESOLUTION CLAUSE:

28. A party must not start arbitration or court proceedings in respect of a dispute arising out of this agreement ("Dispute") unless it has complied with this clause.
29. A party claiming that a Dispute has arisen must notify the other party within 30 days of becoming aware of the matter the subject of the Dispute.
30. Within 7 days after a notice is given under clause 29, each party must nominate in writing a representative authorised to settle the Dispute on its behalf. Each representative will use their best efforts to arrive at an amicable solution as soon as possible.
31. If the respective representatives of each party are unable to resolve the Dispute within 10 days (or such other period as agreed between the parties) after the notice is given, they must refer the dispute to the Chief Executive Officer of each party for resolution.

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32. If the Chief Executive Officers cannot resolve the Dispute within 10 days after referral under clause 31, the parties must endeavour in good faith during the following 10 days:

- a) to resolve the Dispute; or
- b) to agree on:
 - i. a process to resolve all or at least part of the Dispute without arbitration or court proceedings (e.g., mediation, conciliation, executive appraisal or independent expert determination),
 - ii. the selection and payment of any third party to be engaged by the parties and the involvement of any dispute resolution organisation,
 - iii. any procedural rules,
 - iv. the timetable, including any exchange of relevant information and documents, and
 - v. the place where meetings will be held.

33. The role of any third party will be to assist in negotiating a resolution of the Dispute. A third party may not make a decision that is binding on a party unless that party's representative has so agreed in writing.

34. Any information or documents disclosed by a representative under this clause:

- a) must be kept confidential; and
- b) may not be used except to attempt to settle the Dispute.

35. Each party must bear its own costs of resolving a Dispute under this clause and, unless the parties agree otherwise in accordance with clause 32(b)(ii), the parties must bear equally the costs of any third party engaged.

36. After the second 10-day period referred to in clause 32 (or longer period as agreed between the parties), a party that has complied with clauses 28-31 may terminate the dispute resolution process by giving notice to the other party.

37. If a party does not comply with any provision of clauses 28 -31 the other party will not be bound by clauses 28-32.

WARRANTY AND CLAIMS:

38. For new equipment, the Supplier will warrant under proper use, care and maintenance, Equipment and programming to be free from defects due solely to faulty workmanship or materials for mechanical, electrical parts and software in accordance with Schedule 1.

39. For repaired Equipment, the warranty on repaired Equipment is the same as for new Equipment except it will apply only to parts repaired or replaced by the Supplier. No separate warranty shall apply to repaired equipment as a whole or to its parts not repaired or replaced by the Supplier.

40. In all cases, the Purchaser will pay for all travel or freight charges and all services performed upon or in relation to such equipment except for the direct and actual cost of the repair or replacement of any Equipment or software.

41. Within the warranty period, the Supplier retains the option and discretion; to either repair, replace or give the Purchaser a credit and have the right to require the Purchaser to deliver the Equipment for this purpose to our designated service centre.

EXCEPTIONS:

42. The Supplier's warranty does not cover the Purchaser for:

- a) Failure to report to the Supplier in the twelve (12) month period from the date of supply;
- b) Failure or damage due to incorrect application, abuse, improper installation or abnormal conditions of temperature, dirt or corrosive matter;
- c) Failure due to operation, above rated capacities or in otherwise improper manner.
- d) Equipment which has been tampered with or altered by anyone other than the Supplier or its authorised representative;
- e) Equipment damaged in shipment or without the Supplier's fault;
- f) Expenses incurred by the Purchaser in an attempt to repair or rework equipment;
- g) Losses, costs, expenses, liabilities and damage (including loss of profits, all liabilities of the Purchaser to the Purchaser's customers or third persons and all other consequential damages) whether direct or indirect and whether or not resulting from or contributed to by the default or negligence of the Supplier, its agents, employees and sub-contractors, which might be claimed as a result of the use of the Equipment delivered. There is no further warranty express or implied in connection with the design, sale or use of the Supplier's products and the warranty liability shall not exceed the cost of correcting defects in the equipment;
- h) Any Equipment of other manufacturers designated by the Purchaser in excess of that other manufacturers' warranty;

i) Except in relation to the supply of a component only, the Supplier's equipment not regularly maintained/ serviced by the Supplier's approved technician during the warranty period.

PERSONAL PROPERTIES SECURITY ACT:

43. The Purchaser agrees that these terms and conditions create a Purchase Monies Security Interest (PMSI) in the Equipment (and their proceeds) supplied presently and in the future by the Supplier to the Purchaser.

44. The Supplier will do all things necessary to execute all documents reasonably required to register the PMSI under these terms of sale and to ensure that the Supplier acquires a perfected security interest in the Equipment under the PPSA.

45. The Purchaser will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection enforcement of our security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the Equipment the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that we have with the Supplier.

46. This PMSI does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.

47. Until ownership of the Equipment passes to the Purchaser, the Purchaser waives rights under the following provision of the PPSA, to the extent that it is permitted by law, subject to s95, s118, s129, s130, (s132(2)); (s152(4)); (s135(2)); (s137(3)); (s142); (a143); (s157(1) and 157(3)).

48. To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Purchaser.

49. The Purchaser further agree that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.

50. The Purchaser's right to possession of Equipment where ownership has not passed to the Purchaser under these terms and conditions shall cease if:

- a) The Purchaser, being an individual, commits an act of bankruptcy;

b) The Purchaser, being a company, circumstance arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Purchaser enters into a Deed of Company Arrangement;

c) The Purchaser cease or threaten to cease conducting business in the normal manner or apply for the deregistration or receives a deregistration notice;

d) Any cheque that the Purchaser provides to the Supplier is dishonoured for payment;

e) The Purchaser fails to comply with any demand for payment issued by the Supplier; or

f) The Purchaser breaches any of the terms and conditions contained herein and/or is in default of any other agreement between both parties.

g) The Purchaser expressly and irrevocably agrees that the Supplier is entitled to enter any premises where the Equipment supplied by the Supplier are located to repossess, remove and sell such Equipment. The Purchaser (successors and assignees, including any external manager or administrator) shall not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agree to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the Equipment pursuant to these terms and conditions including any claims brought by third parties.

h) The Purchaser agrees that repossession and retention of the Equipment pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Purchaser, as is equivalent to the Supplier's estimation of the market value of the Equipment as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Supplier has on the value of the Equipment recovered.

i) Until ownership of the Equipment passes, the Purchaser must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change property security register a financing change statement under the PPSA.

j) The Purchaser agrees not to change its name or undertake any changes to any documents that the Supplier has registered, requires to be registered or are capable of being registered without the Supplier's prior written consent.

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FORCE MAJEURE:

51. For purposes of this Agreement, "force majeure" shall mean any event or condition, not existing as of the date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of any Party, which prevents, in whole or in material part, the performance by a Party of its obligations hereunder, except an obligation on the part of such Party to make any payment hereunder. Any Party hereto affected by an event or condition of force majeure shall, upon providing prompt notice to the other Parties, be excused, subject to the following sentence, from performance to the extent and for so long as such event or condition so prevents its performance, provided that the Party so affected shall use reasonable efforts to avoid or remove the cause of non-performance and shall continue performance hereunder immediately upon the removal of such cause.

VIENNA SALES CONVENTION:

52. The United Nations Convention on Contracts for the International Sale of Goods (The Vienna Sales Convention 1980) shall not apply to this Agreement.

INSURANCE:

53. a) Each party shall ensure that it holds Workers' Compensation Insurance in accordance with the laws of the relevant State or Territory, Public Liability Insurance, Motor Vehicle and Plant and Liability Insurance.
- b) Each party agrees to make available to the other party, on request, certificate of currencies for Public Liability Insurance, Workers Compensation Insurance, Motor Vehicle, Plant and Equipment Insurance.

INTELLECTUAL PROPERTY:

54. All information of whatever kind or nature which the Supplier discloses to the Purchaser which is in tangible and/or electronic form (or communicated orally and subsequently presented in tangible or electronic form) and is advised to be confidential or proprietary and will be regarded and treated as confidential and the property of the Supplier and will be called in this Agreement, "Confidential Information".
55. Confidential Information will include all employee personal information, financial information, business plans, intellectual property ("IP"), machines, machine components, assemblies, sub-assemblies, components and / or software and manufacturing processes relating to the performance and business of the Supplier.

56. The obligations in this Agreement will not apply to Confidential Information which:

- is already or hereinafter becomes published publicly;
- is lawfully obtained by the Purchaser from a third-party with full rights of disclosure; or
- was already known to the Purchaser at the date of receipt of the information pursuant to this Agreement.

LIMITATION OF LIABILITY:

57. To the extent permitted by law, the Supplier excludes all conditions, warranties and guarantees provided or implied by any State, Territory or Commonwealth law, including but not limited to the Competition and Consumer Act 2010 (Cth) and the provisions of any similar State or Territory legislation.
58. Notwithstanding any other condition of this agreement, if the Supplier is found liable to the Purchaser, the Supplier's liability is limited to:
- the resupply of the Services and/or Equipment; or
 - the cost of resupplying the Services and/or Equipment.

59. The Purchaser shall be liable for and shall indemnify the Supplier against all claims, demands, damages, costs and legal proceedings arising out of the driving of any of the Purchaser's vehicles by the Supplier's employees, agents, or sub-contractors and shall ensure that any such liability is insured.

60. The Supplier will provide the Equipment and Services to the Purchaser, and the Supplier agrees to provide the Equipment and Services to the Purchaser, in accordance with the terms of this Agreement and any and all costs, expenses, losses and damages suffered or incurred in making good or replacing the Equipment and or Service will be capped to the value of the overall contract.

61. We note that by you raising a Purchase Order, you are effectively accepting our Terms and Conditions of Supply of Equipment & Services. If you would like to enter into a discussion with respect to Terms and Conditions, commensurate with balanced views and our obligations within the Australian Consumer Law provisions, please provide at least 2 weeks notice as this will enable our National Director Legal and our Chief Financial Officer to consider such terms.

62. Should both parties agree to departure clauses from the Diverseco Terms and Conditions, the customer accepts our quotation on the basis that clause 5 - 16 price and terms of payment including cancellations and terminations will prevail.

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| Sales Quote Number: | |
| Diverseco Representative: | |
| Signature: | |

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| Purchase Order Number: | |
| Company or Proprietor(s) Name(s): | |
| ACN/ABN: | |
| Authorised Representative: | |
| Position Held: | |
| Signature: | |
| Date: | |