

1 DEFINITIONS 1.1 Unless the context otherwise requires: "**Buyer**" means the party named as the client in the Quotation "**Contract Price**" means the price for the Goods and Services included by the Seller in any Quotation; "**Days**" means business days in the State of South Australia; "**Ex Works**" has the same meaning as in Incoterms 2010; "**Force Majeure**" means any cause for delay to the delivery of Goods or Services beyond the Seller's reasonable control, including but not limited to strikes, or other industrial action or disputes, acts of government, acts of God, acts of terror, machinery breakdowns and adverse weather conditions; "**Goods**" means the equipment/goods or items specified on the Quotation; "**Meters**" means an approved hour-of-use meter and an approved 3 axis G-force data logger. A list of approved devices is available from the Seller upon request. Unless stated otherwise in the Quotation, it is the Buyer's responsibility to fit and maintain the operation of the Meters at its cost. "**Quotation**" means the quotation attached to these Terms "**Repair**" means repair at the cost of the Seller repair or at the Seller's discretion replace at the premises of the Seller or its nominated agent during normal working hours and at a time and for a period convenient to the Seller. "**Seller**" means the company named in the header of this document. "**Seller Warranties**" means the warranties in clause 9.1; "**Services**" means all services defined in the Quotation; "**Site**" means the physical location where the Goods will be commissioned, started up, tested, inspected, serviced or maintained as described in clause 3.4 ; "**Specification**" means the requirements of the Buyer as set out in the Quotation, and as varied in accordance with these Terms; "**Terms**" means these terms and conditions; "**Validity Period**" means the validity period given on the Quotation; and "**Variation**" means any changes or addition to the Goods or Services and includes without limitation changes to details, sizes, quantities, qualities, character of Goods, delivery instructions, delivery times, specifications for materials and any other item or matter which may increase or add to the cost, time or work to be performed by the Seller; "**Warranty Period**" means 1,000 metered hours of use, or until the expiry of the period listed in the Quotation starting from the date of delivery. The Warranty Period ends if the Meters are not fitted, continuously working, and not disabled or tampered with for the whole of the said 12 months.

2 CONTRACT 2.1 The Terms and Quotation will, if accepted in accordance with these Terms, result in a

binding contract (**Contract**) between the Seller and Buyer. 2.2 The Buyer may accept the Terms and Quotation by communicating its acceptance to the Seller during the Validity Period ("**Acceptance**").

3 SCOPE OF WORK 3.1 The Seller agrees to supply the Goods and Services as described in the Quotation. 3.2 Any duration measurement or specification that is not in writing and include a stated tolerance may at the discretion of the Seller be taken to be approximate. 3.3 The Buyer acknowledges that any clerical or typographical errors or omissions in Seller's documents may be the subject of correction by the Seller, and in which case, such corrections shall be deemed to apply to the original document as at the date that document was issued. 3.4 If the Seller is to perform any commissioning, start up, testing, inspection, servicing or maintenance of the Goods, then for any such work, the Buyer must have the Site clear, available and in such a condition as to allow the installation and operation of the Goods and, if required by the Seller, the Buyer must provide free of charge fuel, water, electricity, steam, gas, fuel and all other services essential to the commissioning, testing and continued functioning of the Goods prior to and during Seller's attendance at the Site. 3.5 Unless specifically included with the Goods and Services, no allowance has been made in the Seller's quotation for, and unless otherwise agreed between the parties in writing, the Seller has no obligation to perform or obtain the following: 3.5.1 delivery of the Goods; or 3.5.2 any work outside normal working hours; or 3.5.3 any approvals from any third parties, including but not limited to, Councils (including any planning, building or development applications or approvals), electricity and water supply authorities, or other statutory authorities; or 3.5.4 the installation, commissioning, start up, testing, inspection, servicing or maintenance of the Goods; or 3.5.5 design services of any kind. 3.6 The Seller will not be liable for any costs, damages, or repairs where the Goods produced by the Seller are used by the Buyer in a manner, or for a purpose, other than that specified to the Seller in writing prior to the Acceptance. 3.7 The Buyer warrants that it has conducted its own investigations and has determined that the Goods are fit for the Buyer's intended purpose. **Supplied Information** 3.8 The Buyer acknowledges that the Seller will rely upon information and specifications provided by the Buyer in preparing the Quotation, entering the Contract, and providing the Goods and Services, including but not limited to any expressed or implied purpose for which the Goods are to be supplied.

3.9 The Buyer acknowledges and warrants that the matters set out in the Quotation, any schedule attached hereto or otherwise communicated to the Seller prior to the Acceptance are true and correct in all material respects.

3.10 The Buyer warrants that it has not relied on any information, specifications, representations, advice, designs, drawings, plans, or other documents provided by the Seller ("**Seller Supplied Information**") for any purpose, including in entering into the contract or determining if the Goods and/or Services are fit for the Buyer's intended purpose. 3.11 All Seller Supplied Information has or will be provided to the Buyer for its convenience only. The Seller shall not be liable to the Buyer for any additional payment, damages, compensation in addition to the Contract Price concerning or in any way connected with any interpretations, deductions, inferences, conclusions, or assumptions made in relation to the Seller Supplied Information, or due to any errors, omissions, representations, or misrepresentations contained in the Seller Supplied Information. **Variations** 3.12 If the Buyer requests (verbally or in writing) that the Seller perform: 3.12.1 any of the items listed in clause 3.5 and or, 3.12.2 any other Variation; any such request will be deemed a request for a Variation, in which case the Seller may, in its sole discretion, elect to carry out the items, works or services which are the subject of the Variation. 3.13 The Buyer and Seller will agree the value of any Variation which will be applied to increase the Contract Price. If the Buyer and the Seller are unable to agree the value of the Variation within 7 calendar days of the Variation being requested and the Seller in its discretion proceeds, the value shall be the sum of actual materials services and labour costs (including but not limited to any freight and insurance costs if applicable) plus a mark-up of 25% to cover general overhead, contingency, and return.

4 PRICE 4.1 Until Acceptance by the Seller, and notwithstanding anything stated on the Quotation, all quotations are to be regarded as estimates only and are subject to withdrawal, correction, or alteration by the Seller at any time. 4.2 All prices in a Quotation, Acceptance or invoice are in Australian Dollars exclusive of GST, taxes, duties and fees that may apply, unless otherwise stated. 4.3 If the Seller uses imported materials as a component in the manufacture of the Goods, the parties agree that any delay in shipping and/or change in exchange rate will entitle the Seller to adjust the delivery time and/or Contract Price to account for any such change.

5 TERMS OF PAYMENT 5.1 Payment by the Buyer for the Goods and/or Services must be by cash, bank cheque or electronic funds transfer in accordance with the terms of payment described in the Quotation. 5.2 Where payment is made by bank cheque, payment shall not be deemed to have been received until the cheque has been honoured on presentation at the drawers Bank. If a cheque is dishonoured, the Seller reserves the right to recover all accounting fees, bank charges and other fees incurred in respect to such dishonour from the Buyer. 5.3 Where the Buyer has failed to make payment in accordance with these Terms or by the due date identified on the invoice provided, the Seller: 5.3.1 may suspend delivery of Goods and supply of the Services to the Buyer; 5.3.2 is entitled to immediate payment for all Goods and Services performed that are the subject of the Contract; and 5.3.3 is entitled to payment of interest on any unpaid amounts from the Buyer, calculated at 15% per annum, calculated monthly. The Buyer and Seller agree that this amount is a genuine pre-assessment of loss having regard to the Seller not being a credit provider. 5.4 The Buyer shall not set off against any amount owed by it to the Seller any amount that is alleged to be owed to the Buyer by the Seller on any account whatsoever

6 DELIVERY AND PART DELIVERY 6.1 If the Buyer requests that the Seller delivers the Goods by or on a nominated date, the Seller will make reasonable endeavours to complete delivery of the Goods as requested by the Buyer. 6.2 Delivery dates quoted by the Seller are indicative only and do not include delays occasioned by factors outside the Seller's control. The Seller is not liable for any costs, losses or damages resulting from delayed or disrupted delivery of the Goods and/or Services. 6.3 The Seller may make, or the Buyer may request part delivery of any item. This action to be confirmed in writing. As a consequence of part delivery/ies, the following applies: 6.3.1 Part deliveries do not invalidate the application of these Terms to all deliveries made 6.3.2 Where part deliveries are requested by the Buyer, these will be a Variation request and the Contract Price will be adjusted in accordance with these Terms. 6.4 If the Buyer is unable or unwilling to accept physical delivery of the Goods at the time or place agreed with the Seller, the Seller will arrange for the storage of the Goods and this will be deemed a request by the buyer for a Variation and the Contract Price shall be adjusted in accordance with these Terms. 6.5 Where the Seller provides delivery of the Goods to the Buyer, the Goods

(including any Goods provided for trial use) will be delivered by the Seller Ex Works. 6.6 The Buyer will provide full and clear access for delivery of any Goods and will be liable for the cost and expense of unloading the Goods. 6.7 Goods returned by the Buyer to the Seller for any reason must be returned at the Buyer's cost and remain at the Buyer's risk.

7 PASSING OF TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

7.1 The Buyer agrees that the Seller still retains ownership of the Goods until paid in full by the Buyer. 7.2 If the Buyer receives the Goods prior to making payment in full, the Buyer agrees to: 7.2.1 store the Goods separately from the property of any other person; 7.2.2 at all times store and label the Goods in some manner that will enable it to be identified as the Seller's property; 7.2.3 not mortgage charge, transfer, convey or otherwise deal with the Goods without the Seller's consent; 7.2.4 at all times allow the Seller to have access to the Goods, inspect or retake possession of the Goods; 7.2.5 allow the Seller, having repossessed the Goods, to recover the debt incurred by the Buyer by selling or disposing of the Goods in the Seller's discretion and as the Seller sees fit. 7.3 The Buyer agrees that until payment is made in full for the Goods that the Buyer has purchased, the Buyer grants the Seller a security interest in the Goods. 7.4 The Buyer agrees that these Terms constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth). 7.5 The Buyer agrees that the Seller's security interest in the Goods can be registered on the Personal Property Securities Register and remain on the Personal Property Securities Register until full payment is made by the Buyer for the Goods.

8 SUSPENSION AND TERMINATION

8.1 If the Seller is precluded from completing the supply of Goods by reason of a Force Majeure event the Seller will be relieved from the execution and performance of its obligations for the duration of the Force Majeure event. 8.2 The Seller will not be liable for any defect, loss, damage, or other delay whatsoever caused by a Force Majeure event. 8.3 The Seller may refuse to supply the Goods that the Buyer has ordered in accordance with the Contract and terminate the Contract and recover any goods to which the Seller has title if: 8.3.1 the Buyer becomes bankrupt or appoints a voluntary administrator or any party applies to wind up the Buyer; 8.3.2 the Buyer fails to pay any invoice by the date it is due; 8.3.3 the Buyer is in breach of any of these Terms and fails to

rectify the breach within 5 Days of receiving a notice from the Seller requesting the Buyer to rectify the breach; or 8.3.4 the Buyer fails to take delivery of the Goods within 5 Days of receiving notice that the Goods are ready for delivery. 8.4 If, after entering the Contract, the Buyer changes or cancels the Quotation, Specification or requests a Variation; the Buyer will (in addition to any Variation and increase to the Contract Price in accordance with these Terms) be liable for and indemnify the Seller for any and all costs or losses associated with the Seller's performance or part-performance of the Goods and/or Services as originally requested by the Buyer in the Quotation.

9 WARRANTY AND LIMITATION OF LIABILITY

9.1 Without limiting anything else in these terms the Seller warrants that the Goods if sold as new equipment are: 9.1.1 in a new and serviceable condition; 9.1.2 of merchantable quality; Legal/66893013_89.1.3 reasonably fit for any purpose as described in the Quotation; 9.1.4 safe and free from any known defects or faults in manufacture 9.1.5 compliant with the Specification; and 9.1.6 free from any charge or encumbrance in favour of any third party, for the Warranty Period. 9.2 Without limiting anything else in these terms the Seller warrants that the Goods if sold otherwise than as new equipment are: 9.2.1 of merchantable quality; 9.2.2 reasonably fit for any purpose as described in the Quotation; and 9.2.3 free from any charge or encumbrance in favour of any third party, for the Warranty Period. 9.3 The Warranties do not apply to anything caused or contributed to by: 9.3.1 misuse, accident, abuse, corrosion, erosion, neglect, negligent repairs, normal wear and tear, alterations or modifications made to the Goods without the express written approval of the Seller; 9.3.2 anything that is not reasonably caused by fault or deficit in the Goods and reasonably attributable to the Seller. 9.3.3 failure to perform normal maintenance or failure to carry out any special maintenance procedures set out in any operator's manual for the Goods; 9.3.4 overloading or misuse of the Goods outside of Specifications, for which purpose the Goods will be deemed to have been overloaded or misused if there are objectively reasonable grounds for the Seller to suspect overloading and the Buyer is unable to produce operational records of loading and use that establish otherwise; 9.3.5 non-compliance with or fulfilment of any written term or condition or specification set out by the Seller; 9.3.6 operation, circumstances and anything else not able to be reasonably foreseen by the Seller at the time

of manufacture. 9.3.7 the Buyer or operator not having or not exercising a reasonable level of knowledge care skill and diligence with respect to operation, maintenance, and safety checks on road-going heavy vehicular equipment. 9.3.8 failure, non-operation or non-performance of any equipment or components manufactured or supplied by persons other than the seller. Where other manufacturer products are supplied by the seller, they shall only carry whatever warranty the manufacturer thereof has granted to the Seller and which can be passed on; 9.3.9 anything that is or is normally the subject of an exclusion in any policy of insurance relating to motor vehicles that is held by or commercially available to the Buyer or the Seller. 9.3.10 any operation use or exposure to conditions including forces and loads above maxima specified in any document provided by the Seller. 9.4 Except for the Warranties, and for any statutory rights attached to the equipment, the Seller gives no understanding, representation, or warranty, whether express or implied, and to the maximum extent permitted by law shall not be held liable, as to the quality, fitness for purpose, specific capability, or any other matter relevant to the equipment at all. All and any such understandings representations and warranties are hereby expressly negated. 9.5 All and any future understandings representations and warranties are not authorised and must not be relied upon unless they are express and in writing signed by the Seller. 9.6 The Seller will not be held liable for any consequential cost or loss whatsoever, including any loss resulting from the use of or inability to use the equipment, the passing of any time nor the spending of any time by management or advisers of the Buyer. 9.7 Other than is expressly provided in this warranty or by statute, the Seller and related parties and their officers employees servants and agents shall not be held liable and are hereby released discharged and forever held harmless by the Buyer from for all and any claims whatsoever and howsoever arising, including but not limited to any contingent, consequential, special, punitive, or other damages or injuries or costs, no matter how they are caused. 9.8 To the extent to which the Seller is entitled to limit its liability in relation to the Goods and/or Services, the Seller's liability is limited (at its discretion) to one or more of the following: 9.8.1 the replacement of the Goods or the supply of equivalent Goods; 9.8.2 the repair of the Goods; 9.8.3 the payment of the cost of replacing the Goods or of acquiring equivalent Goods; 9.8.4 the payment of the cost of having the Goods repaired; 9.8.5 the supplying of the Service again; or 9.8.6

the payment of the cost of having the Service supplied again. 9.9 Nothing in these Terms will affect any other rights and remedies the Buyer may have under the *Competition and Consumer Act 2010* (Cth) and the *Fair-Trade Act 1987* (SA), any subsequent amendments and/or similar legislation. 9.10 The Buyer releases and indemnifies the Seller for any injury, loss, or damage occasioned to the Buyer or any third-party having right of recourse or relief against the Buyer including but not limited to loss or damage occasioned by failure or delay in delivery or performance of any Service unless wholly attributable to the gross negligence of the Seller. 9.11 The Buyer further acknowledges sole responsibility for any loss, damage or injury to the environment, property or persons caused by using the sold Goods to pump or transfer hazardous or toxic fluid or substances.

10 DISPUTE RESOLUTION 10.1 If a dispute or difference arises between the Buyer and Seller in relation to the Contract, the Goods or Services (a "**Dispute**"), the parties must, before commencing any litigation (other than for urgent injunctive relief) seek to resolve the Dispute in accordance with the process set out in this clause. 10.2 If a Dispute arises, the party initiating the Dispute must serve a notice of dispute on the other party, which sets out details of the Dispute, including any cause of action and relevant material facts to the dispute ("**Notice of Dispute**"). 10.3 Within 5 Days after receipt of a Notice of Dispute or such longer period agreed by the parties, authorised representatives of the parties must meet to attempt to resolve the Dispute ("**Parties Meeting**"). 10.4 If the Dispute is not resolved at the Parties Meeting, either party may refer the dispute to mediation and in which case, the following will apply: 10.4.1 The parties have 10 Days after the Parties Meeting to agree the mediator to be appointed. If they are unable to agree the appointment of a mediator within this time, then may request that a mediator be appointed by the Resolution Institute. 10.4.2 The mediator will determine the terms and procedure for the mediation. 10.4.3 The costs of the mediator will be borne equally between the parties. 10.5 If the Dispute is not resolved at the mediation in accordance with clause 10.4, then the Seller, in its absolute discretion, may then refer the Dispute to an expert engineer for determination ("**Expert Determination**"). In which case: 10.5.1 the parties have 10 Days after the mediation in accordance with clause 10.4 to agree to the appointment of an expert engineer ("**Expert**") to determine the alleged defect or technical

issue in relation to the Goods and/or the Services. If the parties are unable to agree the appointment of an Expert within this timeframe, then either party may request that the Expert be appointed by Engineers Australia. 10.5.2 the Expert must act as an expert engineer and not an arbitrator; 10.5.3 the Expert must inspect the Goods and apply his or her own expertise; 10.5.4 The Expert may determine the terms and procedure for the Expert Determination as he or she sees fit and will not be bound to observe natural justice; 10.5.5 Unless agreed otherwise by the parties, the Expert will make a determination within 30 days of the Expert's appointment ("**Expert Determination**"). 10.5.6 The Expert Determination must be in accordance with these Terms and be in writing. 10.5.7 Absent manifest error the Expert Determination will be final and binding on the parties and must determine which party is responsible for payment of the Expert's fees. 10.6 With the exception of a Dispute which is the subject to clause 10.5, the parties may commence court proceedings, after a mediation in accordance with clause 10.4.

11 INTELLECTUAL PROPERTY

11.1 Any intellectual property, including but not limited to copyright, patents, brand names, logos, registered and unregistered trademarks, registered designs, trade secrets, discoveries, inventions, secret processes, business methods, procedures or improvements created by or on behalf of the Seller in connection with any Contract remains the property of the Seller. 11.2 The Buyer acknowledges that all intellectual property, technical information, advice, know how, drawings and designs and samples provided by the Seller are confidential and the property of the Seller ("**Confidential Information**"). The Buyer will keep all Confidential Information secret and confidential and will not disclose it to any third party without the prior express written consent of the Seller. 11.3 If the Buyer provides designs, samples, or other information regarding the Goods to the Seller, the Buyer agrees to indemnify the Seller completely and absolutely against any and all costs, loss and damage, including consequential loss and legal fees, in relation to any claim for infringement of intellectual property rights as may be made by any other party.

12 OTHER

12.1 All modifications and amendments to these Terms must be agreed by the Seller in writing otherwise they will not be binding upon the Seller. 12.2 These Terms represent the entire agreement between the Buyer and Seller. Any terms and conditions deviating from or inconsistent with these Terms (including any

implied terms) are (to the extent possible at law) expressly rejected by the Seller. This rejection also extends to any statement by the Buyer that the Buyer's terms and conditions prevail and to any stipulation by the Buyer as the manner of declaring such rejection. 12.3 These Terms apply to every quotation for and the sale of all Goods and provision of Services from the Seller to the Buyer. 12.4 If any of the provisions of this Contract are unlawful or invalid by reason of any applicable statute or rule of law, then such provision shall be severed from the rest of this Contract which shall remain valid and binding on all parties. 12.5 Unless stated otherwise, all notices under these Terms must be provided in writing. 12.6 The failure of the Seller to enforce any of these Terms shall not be deemed to be a waiver of these Terms. 12.7 A reference in these Terms to: 12.7.1 the singular includes the plural, and the plural includes the singular; 12.7.2 these Terms include any variation to these Terms, the Goods, or the Services; 12.7.3 a day or month means a calendar day or calendar month. 12.8 Headings in these Terms are for convenience only and do not form part of these Terms. 12.9 If a period of time is specified and dates from a given day or act or event, it is to be calculated exclusive of that day. 12.10 A provision in these Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms or the inclusion of a clause into these Terms. 12.11 The Contract between the parties shall be governed by and construed in accordance with the laws of South Australia and the parties hereby submit to the non-exclusive jurisdiction of the Courts of South Australia.