



Terms and Conditions of Service

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the rate specified in the Quote.
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Agreement means these Terms and Conditions and the Contract Documentation as amended from time to time.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Call-Out Service means the provision of on-site Goods and Services by the Supplier to the Customer and includes any breakdown services or similar.

Claim means any claims, demands, suits, proceedings, causes of action, damages, debts, costs, verdicts and judgements whatsoever whether at law or under any statute brought by any party for a loss of profit or any other direct, indirect, special or consequential loss or damage, cost, expenses or similar.

Consequential Loss means loss of production, loss of profit or anticipated profit, or loss of opportunities.

Contract Documentation means these terms and conditions together with any Quote, Supplier invoice, customer purchase order or other agreement between the parties in writing to supplement these terms and conditions. In the event of any inconsistency between the contract documentation, priority will be given in the following order from highest priority to lowest:

- (a) Quote;
- (b) Supplier invoice;
- (c) Other agreement in writing between the parties to supplement these terms and conditions;
- (d) these terms and conditions; and
- (e) Customer purchase order.

Customer means the entity requesting the Supplier to provide Good or Services as specified in any Quote, order, invoice or other relevant document.

Customer Supplied Parts means any physical parts or components provided by the Customer to the Supplier for use by the Supplier in providing the Scope of Work including those listed in the Quote.

Down Time means the period of time the Customer's Equipment is inoperable or unable to provide the Customer required output for any reason.

Customer Equipment includes any of the customer's property including any Machinery and other equipment or documentation and/or any items of any description in or attached to the Customer's Equipment.

Goods means any goods to be supplied by the Supplier to the Customer as specified in the Scope of Work or as varied in accordance with the terms of the Agreement.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, circuit layout rights, trademarks, patents and registered designs.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs), expenses, fines, penalties, lost profits, award of damages, personal injury, property damage and any consequential losses.

Machinery means machinery used in any industry including earthmoving, mining, road transport, marine, agricultural, automotive, heavy machinery and four-wheel drive machinery.

PPS Law and PPSA means:

- (f) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (g) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Proceeds has the same meaning under the PPS Law.

Quote means description of the Scope of Work, an estimate of the Supplier's charges for the performance of the required Scope of Work and an estimate of the time frame for the performance of the Scope of Work, and may be written, verbal or in the form substantially provided in Schedule 1.

Scope of Work means the description of the Goods or Services detailed in the Contract Documentation.



Security Interest means any security interest defined by the PPS Law and created by this Agreement.

Services means the services to be provided by the Supplier to the Customer as specified in the Scope of Work or as varied in accordance with the terms of the Agreement.

Specific Customer Requests means any request made by the Customer as detailed in the Quote.

Storage Fee means the fee notified by the Supplier, from time to time, and may be displayed on the website of the Supplier, displayed in the office area of the premises of the Supplier or advised to the Customer either in writing or verbally.

Supplier means the Tefol Group its successors and assigns or any person acting on behalf of and with the authority of the Tefol Group includes the Supplier's agents and permitted assigns.

Tefol Group means Tefol Pty Ltd, Tefol North Queensland Pty Ltd, Line Boring Services Australia Ltd, and NJB Holdings Pty Ltd and any subsidiary thereof.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a party to this Agreement or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) headings are for ease of reference only and do not affect the meaning or interpretation of this Agreement; and
- (f) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - i. if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - ii. in all other cases, must be done on the next Business Day.

2. Agreement

The Supplier is providing, and the Customer is accepting, the Goods and Services on the terms and conditions set out in this Agreement. The parties agree that the terms of this Agreement shall apply to the provision of the Scope of Work, and any variations, by the Supplier to the Customer. The Customer agrees and acknowledges that the Customer is bound by these terms and conditions (notwithstanding that the Customer may not have signed these terms and conditions) when the Customer authorises or approves the Supplier to carry out work, whether that work is the supply of Goods and/or the performance of Services.

3. Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue unless expressly stated otherwise on the Quote.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery of the Goods.
- (c) Quotes are based upon the cost of materials and labour available at the time of preparation of the Quote.
- (d) The Supplier is not obliged to commence work until the Quote and the terms of this Agreement have been accepted by the Customer by either signing the Quote or accepting the Quote in writing.
- (e) The Supplier reserves the right to amend any Quote before any part of the Scope of Work have been completed to take into account any rise or fall in the cost of completing the Scope of Work. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the Quote for the purposes of the Agreement. If the amended Quote is not accepted by the Customer within 48 hours of delivery by the Supplier of the amended Quote, either party will be entitled to terminate the Agreement.
- (f) An indication in a Quote of the time frame for the provision of the Scope of Work is an estimate only and the Supplier makes no warranty about the timeframe for the provision of the Scope of Work.

4. Variations and Additional Charges

- (a) The Customer may request that the Scope of Work be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) The Supplier may vary the Scope of Work once work has commenced if reasonably required in the circumstances (for example upon identification of hidden or unknown factors only readily identified once work has commenced by the Supplier). The Supplier should use best efforts to notify the Customer of such a variation prior to undertaking any work related to the variation, however the Customer accepts that this may not always be possible.
- (c) The Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work performed due to the variation, in accordance with its then current charge rates. Any revised Quote or Scope of Work issued by the Supplier in respect of the requested variation supersedes the original Quote.

- (d) The Supplier has an automatic extension of time for the provision of the Scope of Work equal to the delay caused by the variation, or any further extension of time reasonably agreed with the Customer.
- (e) The Supplier may require the Customer to pay Additional Charges in respect of any Loss incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).

5. Invoicing and payment

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - i. prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - ii. in accordance with the invoicing terms specified in the Quote or invoice provided by the Supplier; or
 - iii. upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Scope of Work and for any Additional Charges.
- (b) The Customer must pay an invoice issued by the Supplier to the Supplier within 30 days of a tax invoice being issued to the Customer, unless expressly stated otherwise in the Quote or Supplier Invoice.
- (c) If any Supplier Invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (d) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (e) The Customer is not entitled to retain, set-off, or otherwise withhold any money owing to the Supplier despite any default or alleged default by the Supplier of the Agreement, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard, or a delay in the provision of Goods or Services.
- (f) The Customer is to pay the Supplier on demand interest at the rate of 14% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (g) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees (on a solicitor-client basis) and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under this Agreement.
- (h) Prior to commencing the Scope of Works, the Supplier may in its absolute discretion require a deposit to undertake the Scope of Works from the Customer.
- (i) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.

6. Acknowledgments, Exclusions and limitation of liability

- (a) The Supplier warrants that it holds the required licences to perform the Services including a motor vehicle repairer's licence, in accordance with the requirements under the *Motor Dealers and Repairers Act 2013* (NSW).
- (b) Where the Customer has requested that the Scope of Works supplied be to a specific part of the existing Customer Equipment, the Customer acknowledges that the Customer Equipment to which the Scope of Works relate may not have the requisite certifications/approvals for the Customer's intended use, may not be free from defects, and may change output over time – all of which are beyond the control of the Supplier.
- (c) The Supplier does not warrant that the operation of the Customer Equipment, to which the Scope of Works are being undertaken, will operate uninterrupted or error free after completion and the Supplier accepts no liability caused from any Down Time. You agree that the Supplier will not be responsible or liable for any consequences to the Customer that may result from Customer error, technical problems with components of the Customer Equipment not the subject of the Scope of Work, or the Customer Supplied Parts.
- (d) The Supplier does not warrant that any motor vehicle, to which the Scope of Works are being undertaken, will pass a pink slip or a blue slip or the equivalent after completion and the Supplier accepts no liability caused from any Down Time.
- (e) The Customer warrants that all intellectual property in the property and information provided to the Supplier for the purposes of providing the services is owned by the Customer and fully indemnifies the Supplier from any Claim brought by any third party in relation to, or Loss arising from or in connection with, the intellectual property in the information or property provided by the Customer to the Supplier.
- (f) The Customer expressly agrees that use of the Goods and Services is at the Customer's sole risk.
- (g) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law (to the extent that it applies), small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.

- (h) Subject to clause 6(m), to the fullest extent permissible at law, and having regard to the Customer's acknowledgement in this clause 6, the Supplier gives no warranty in relation to the Goods or Services provided or supplied. Under no circumstances is the Supplier liable or responsible in any way to the Customer or any other person for any Loss, damages, costs, expenses or other claims (including Consequential Loss and loss of profits or loss of revenues, including for Down Time), as a direct or indirect result, of any defect, deficiency or discrepancy in the supply of the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- i. any Customer Supplied Parts or information provided to the Supplier;
 - ii. any delay in supply of the Goods or Services;
 - iii. any failure to supply the Goods or Services;
 - iv. if the Customer uses the Goods or Customer Equipment for any purpose than that for which they were designed;
 - v. if the Customer modifies or alters the Goods or the Customer Equipment once the Services have been provided;
 - vi. if the Customer fails to adequately maintain the Good or Customer Equipment;
 - vii. any fair wear and tear or damage caused by a party other than the Supplier; or
 - viii. if the Customer failed to use the Goods or Customer Equipment in an appropriate manner, including continuing to use the Goods or Customer Equipment after any defect became or should have become apparent to a reasonably competent operator.
- (i) To the fullest extent permissible at law and subject to clause 6(m), any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (j) The Customer acknowledges that the Scope of Work is generated from the information, and where relevant the parts, the Customer has provided to the Supplier. The Customer warrants that they have comprehensive knowledge of the Customer Equipment to which they have requested the Scope of Work be completed. The Supplier is not responsible for any mistake or omission that the Customer makes in providing the Customer Equipment, Customer Supplied Parts or information to the Supplier.
- (k) The Customer acknowledges and agrees that information, Goods or Services relating to the Scope of Works, may be provided by third parties where reasonably required. The Customer agrees that they will not hold the Supplier responsible or liable for any loss or damages suffered by the Customer from reliance on information or incorporation of goods or services supplied by a third party, and the Customer agrees to hold the Supplier harmless in relation to same.
- (l) The Customer may be entitled to certain consumer guarantees under the Australian Consumer Law (**ACL**). Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited:
- i. with respect to the supply of Goods: to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods; and
 - ii. with respect to the supply of Services: to the supply of the Services again or the cost of re-supplying the Services again.
- (m) If the Customer is not a consumer under the *Competition and Consumer Act 2010* (Cth), the Supplier's liability for any defect or damage in the Goods supplied will limited to the express warranty provided by the Supplier to the Customer (if any), or, where the Supplier did not manufacture the Goods, be limited to any warranty to which the Supplier is entitled from the original manufacturer.
- (n) Nothing in this Agreement is intended to exclude the Customers rights under the Australian Consumer Law to the extent that the Customer is a Consumer under the ACL.

7. Customer Warranties

- (a) The Customer warrants that:
- i. The Customer warrants that the Goods or Services are not for personal, domestic or household purposes;
 - ii. it has had an opportunity to inspect and conduct due diligence investigations into the completed Scope of Works and the Goods or Services provided by the Supplier;
 - iii. it takes the Goods, equipment or asset from the Supplier upon delivery of the Goods or Services in their completed state and condition;
 - iv. it may not make any Claim against the Supplier in relation to any defect, except where the defect is a direct result of the Supplier's failure to perform the Scope of Works.
 - v. acceptance of any Quote, or acceptance of delivery of the Goods or Services by the Customer will constitute legally valid and binding obligations on the Customer enforceable in accordance its terms; and

- vi. there are no actions, claims, proceedings or investigations pending or threatened against the Customer or, to their knowledge by, against or before any person which have a material effect on the Scope of Work in accordance with this this agreement.

This clause shall survive completion of the Scope of Work and any termination of this Agreement.

8. Customer Supplied Parts and Specific Customer Requests

- (a) The Customer may request that the Supplier use any Customer Supplied Parts in any work. If the Customer so requests, it is agreed:
 - i. The Supplier does not offer any warranty for using Customer Supplied Parts in the Scope of Work;
 - ii. The Supplier shall, so far as it is able, ascertain whether the Customer Supplied Parts is fit for the purpose of the Scope of Work. The Supplier may request information and details from the Customer about the Customer Supplied Parts and the Customer, must, in good faith, provide all reasonable details requested by the Supplier.

The Customer acknowledges that Supplier will rely heavily upon the information and details provided by the Customer in respect of the Customer Supplied Parts in its decision whether the Customer Supplied Parts are suitable to be installed or used in any work;
 - iii. If the Customer Supplied Parts is, in the opinion of the Supplier, suitable, the Supplier shall install or use the Customer Supplied Parts in the work for the Customer; and
 - iv. If the Customer Supplied Parts is, in the opinion of the Supplier, not suitable for installation or use in any work, the Supplier shall inform the Customer of that view. If the Customer insists that the Customer Supplied Parts be installed or used in any work, the Supplier expressly disclaims any liability for loss or damage arising out of installing or using the Customer Supplied Parts including in relation to any Loss, Claims, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues, including for Down Time).
- (b) The Customer may make Specific Customers Requests in relation to the performance of the Scope of Work. If Specific Customer Requests are made, it is agreed:
 - i. The Supplier does not offer any warranty for adopting or otherwise accommodating the Specific Customer Requests in the provision of the Scope of Work;
 - ii. The Supplier shall, so far as it is able, ascertain whether the Specific Customer Requests are appropriate for the Scope of Work. The Supplier may request information and details from the Customer about the Specific Customer Requests and the Customer, must, in good faith, provide all reasonable details requested by the Supplier.

The Customer acknowledges that Supplier will rely heavily upon the information and details provided by the Customer in respect of the Specific Customer Requests in its decision whether the Specific Customer Requests are suitable in the circumstances;
 - iii. If the Specific Customer Requests is, in the opinion of the Supplier, suitable, the Supplier will accommodate the Specific Customer Requests in performance of the work for the Customer; and
 - iv. If the Specific Customer Requests is, in the opinion of the Supplier, not suitable, the Supplier will inform the Customer of that view. If the Customer insists that the Specific Customer Requests be accommodated in the performance of the Scope of Work, the Supplier expressly disclaims any liability for loss or damage arising out of accommodating the Specific Customer Requests including in relation to any Loss, Claims, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues, including for Down Time).

9. Call-Out Services / On-Site Services

- (a) A Call-Out Service may only be provided where the Customer Equipment is fully accessible and serviceable by the Supplier. The Supplier will assess and determine in its absolute discretion, the accessibility and safety of performing the Call-Out Service and this determination may be made while the Supplier is already in attendance at the call-out location.
- (b) The Supplier will charge fees for a Call-Out Service as quoted in writing to the Customer. Where providing a quote in writing is not practicable in the circumstances, the Supplier will provide a quote verbally.
- (c) Despite the above, the Supplier reserves the right to charge reasonable fees in addition to any quote provided for such a Call-Out Service, if:
 - i. Additional equipment and resources are required which were not reasonably anticipated when quoting for the Call-Out Service;
 - ii. Additional labour or parts are supplied by the Supplier which were not reasonably anticipated when quoting for the Call-Out Service; or
 - iii. Ferry, barge crossing and/or toll roads or other such service is used in the provision of the Call-Out Service;
- (d) If towing is required, towing will need to be organised by the Customer and subject to the terms and conditions of the entity performing the towing services.
- (e) The Supplier provides no guarantee that delays will not occur from time to time when attending a Call-Out Service, including when there is unexpected traffic congestion and/or severe weather conditions, or if the Supplier is engaged in providing Services elsewhere.

- (f) The Customer warrants that it has authority to provide the Supplier access to the Call-Out Service location and equipment for the Supplier to provide the service.
- (g) The Supplier will use reasonable efforts to locate and take all reasonable steps to protect all overhead utility lines, underground pipes, conduits or cables (**Utilities**) that exist on or in the vicinity of the location that may be affected by the performance of the Call-Out Services. The Supplier must immediately report damage to any Utilities to the Customer and, notwithstanding any other provision of the Agreement, if the damage results directly from an act or omission of the Supplier, it must repair or replace the damaged Utilities at its cost.
- (h) The Customer assures the Supplier that in providing the Call-Out Services, the Supplier is not:
 - i. engaging or aiding in any unlawful and fraudulent activity, including theft, attempted theft or otherwise; or
 - ii. infringing on the rights of other persons.
- (i) The Customer may be required to pay for the full cost of the Call-Out Service, where:
 - i. the Supplier is unable to access the Customer Equipment;
 - ii. The Supplier is unable to locate the Customer Equipment..

10. Storage Charges

- (a) If the Customer's Equipment is not collected by the Customer within seven (7) days of the work being completed, the Supplier is entitled to charge a Storage Fee.
- (b) Any Storage Fee is payable when the equipment is collected by the Customer.
- (c) Salvage and towing fees may also be payable. Any salvage or towing fee/s charged is the fee notified by the Supplier, from time to time, and may be displayed on the website of the Supplier, displayed in the office area of the premises of the Supplier or advised to the Customer either in writing or verbally.

11. Abandonment

- (a) If any amounts due by the Customer to the Supplier have not been paid within six (6) calendar months of the due date then the Supplier may, subject to any requirements of the general law and/or equity or pursuant to statute, sell any property in the control or possession of the Supplier, including the Customer's Equipment.
- (b) The Supplier shall undertake reasonable attempts to contact the Customer in respect of the amounts outstanding. Any sale by the Supplier shall comply with applicable legislation in respect of the disposal of uncollected or abandoned goods and vehicles.
- (c) In the event that the Supplier sells the Customer's property, the Supplier will apply the proceeds, in the first instance to the satisfaction of the amounts outstanding by the Customer and the costs of exercising the right of sale with any balance of the proceeds of sale to be returned, where possible, to the Customer.

12. Authority in respect of Customer Equipment

- (a) The Customer authorises the Supplier and their assigns to do every act matter and thing that the Supplier considers desirable or necessary to undertake the works in respect of the Customer's Equipment including, but not limited to entering the Customer's Equipment, test driving the same (including on locations outside of the supplier's premises), performing diagnostic testing.
- (b) The Supplier accepts no liability for damage that occurs or is sustained to the Customer's Equipment or property including any motor vehicle and/or goods of the Customer when in the possession of the Supplier or their assigns, unless such damage is caused by the wilful or negligent act or omission of the Supplier or their assigns.
- (c) The Supplier accepts no liability or responsibility for property of the Customer or contents of any equipment that is left in or attached to the Customer's Equipment while the equipment is in the possession or control of the Supplier or otherwise.

13. Title, Risk and Lien

- (a) Risk in the Goods passes to the Customer once the Goods leave the Suppliers premises.
- (b) Property and title in the Goods supplied to the Customer pursuant to this Agreement does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid to the Supplier.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
 - i. is a bailee of the Goods until property in them passes to the Customer;
 - ii. irrevocably appoints the Supplier as its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any Security Interest in favour of the Supplier with respect to the Goods under applicable law;
 - iii. must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - iv. must not allow any person to have or acquire any security interest in the Goods;

- v. agrees that the Supplier may repossess the Goods if payment is not made by the due date for payment or otherwise if the Customer commits an event of default; and
 - vi. the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Supplier in respect of any Loss which the Supplier incurs as a result of the Supplier entering the Customer's premises. This clause shall not merge on completion.
- (d) Where Goods are supplied to the Customer and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under this Agreement or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under 13(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite clause 13(c) the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
- i. where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Supplier - in a separate account - until all amounts owned by the Customer to the Supplier have been paid; or
 - ii. where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) If Chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under or in connection with the Agreement, the Customer agrees the following provisions of the PPSA will not apply to the enforcement of that Security Interest:
- i. section 95 (notice of removal of accession), to the extent that it requires the Supplier to give the Customer a notice;
 - ii. section 96 (when a person with an interest in the whole may retain accession);
 - iii. subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - iv. section 125 (obligation to dispose of or retain collateral);
 - v. section 130 (notice of disposal), to the extent that it requires the Supplier to give the Customer a notice;
 - vi. paragraph 132(3)(d) (contents of statement of account after disposal);
 - vii. subsection 132(4) (statement of account if no disposal);
 - viii. section 142 (redemption of collateral);
 - ix. section 143 (reinstatement of security agreement).
- (i) The Customer consents to the Supplier effecting a registration on the PPSR (in any manner we consider appropriate) in relation to any Security Interest arising under or in connection with this Agreement and the Customer agrees to provide all assistance reasonably required by the Supplier to facilitate this.
- (j) The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (k) The Customer acknowledges that if the Supplier's interest under this Agreement is a Security Interest for the purposes of the PPSA:
- i. that Security Interest relates to Goods supplied and all Proceeds of any kind;
 - ii. this Agreement is a security agreement for the purposes of the PPSA.

14. Lien and Caveatable Interest

- (a) In addition to any other remedy or right that the Supplier may have, the Customer acknowledges that the Supplier has the right to a lien (under general law and/or equity or pursuant to statute) over all property of the Customer in the control or in the possession of the Supplier including, without limitation, the Customer's Equipment and/or all items of any description in or attached to the Customer's Equipment, to secure payment of any or all amounts outstanding.
- (b) The Customer agrees and acknowledges that the Supplier may, in its discretion, exercise its lien in respect of any due and unpaid amounts owing by the Customer to the Supplier and may retain the Customer's Equipment and/or any items of any description in or attached to the Customer's Equipment until payment of all amounts outstanding by the Customer to the Supplier have been paid.

- (c) The Supplier may exercise all and any rights that it has (under the general law and/or equity or pursuant to statute) in respect of any property of the Customer in the control or in the possession of the Supplier, for the purposes of seeking payment of all outstanding amounts due by the Customer to the Supplier.
- (d) The Customer hereby charges all their right, title and interest (if any) to any or all real property now owned or partly owned, or in the future may become owned, solely or jointly by the Customer (**Secured Property**), to better secure the monies outstanding, with the due and punctual observance and performance of all the obligations of the Customer under this Agreement. The Customer acknowledges that the Supplier may at its discretion register a caveat on the Secured Property in respect of the interest conferred on it under this clause.
- (e) The Customer grants to the Supplier the right to appoint a receiver and sell the Secured Property in the event the Customer commits an event of default.

15. Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - i. the Customer breaches or is alleged to have breached this Agreement for any reason (including, but not limited to, defaulting on any payment due under this Agreement) and fails to remedy that breach within 7 days of being given notice by the Supplier to do so;
 - ii. the Customer, being a natural person, commits an act of bankruptcy;
 - iii. the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (D) any assignment for the benefit of creditors;
 - iv. the Customer misrepresents any right to or ownership of the information or intellectual property provided by the Customer to the Supplier;
 - v. the Customer purports to assign its rights under this Agreement without the Supplier's prior written consent;
 - vi. the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - i. terminate this Agreement;
 - ii. terminate any credit arrangements (if any) with the Customer;
 - iii. refuse to deliver Goods or provide further Services;
 - iv. pursuant to clause 13(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - v. retain (where applicable and permissible by law) all money paid on account of Goods or Services supplied to or received by the Customer.
- (c) In addition to any action permitted to be taken by the Supplier under this Agreement, on the occurrence of an event of default, all invoices will become immediately due and payable.

16. Indemnity

- (a) The Customer:
 - i. Waives;
 - ii. Releases; and
 - iii. Indemnifies and keeps indemnified,
the Supplier, against any Loss or Claim of or against the Supplier, including but not limited to, indemnifying the Supplier against any judgement, order, awards, penalty, damages, compensation and interest ordered or entered against the Supplier and any legal costs and expenses (excluding consequential damages and indirect loss of profits or loss of revenues) incurred by the Supplier incidentally in defending any such Claim.
- (b) The Customer indemnifies the Supplier against any Loss or Claim of or against the Supplier to the extent the Claim arises from, or is in connection with, any breach by the Customer of any of the Customer's warranties, acknowledgements and obligations in this Agreement (excluding consequential damages and indirect loss of profits or loss of revenues).

This clause shall survive termination of this Agreement.

17. Force majeure

- (a) If circumstances beyond a Party's control prevent or hinder its provision of the Goods or Services, the party is free from any obligation to provide the Goods or Services while those circumstances continue. The party may elect to terminate this Agreement or keep the Agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond a party's control include, but are not limited to, unavailability of materials or components, pandemic or epidemic, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees or restrictions, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

18. Confidentiality

- (a) For the purpose of this Agreement, confidential information means any information (whether in writing or otherwise) about the Suppliers business, goods or services, financial information, pricing, terms of trade, third party suppliers, contracts, warranties and any other information marked as being confidential by the Supplier (**Confidential Information**).
- (b) The Customer must not, without prior written consent use or disclose the Supplier's Confidential Information except as required by law, or with the Suppliers prior written consent.
- (c) The Customer hereby agrees to indemnify the Supplier against all liabilities, costs, loss and expenses which the Supplier may suffer or incur as a result of any breach by the Customer of this clause, and the Customer acknowledges that damages may be an inadequate remedy for breach of this clause and the Supplier may obtain injunctive relief against the Customer.

19. Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to this Agreement.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from this Agreement provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under this Agreement.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under this Agreement without the prior written consent of the Supplier. A change in the effective control of the Customer without the prior consent of the Supplier (which must not be unreasonably withheld) will be a deemed assignment of this Agreement. A change in the effective control of the Customer includes (for a corporate Customer) a change in shareholding or officeholders, or (for a Customer entering into this Agreement in their capacity as trustee of a trust), there is a change to the terms of the trust or change in trustee of the trust.

20. Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - i. A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - ii. A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause.
 - iii. A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within five Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ADC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into this Agreement. This clause survives termination of this Agreement.
- (d) Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under this Agreement, subject to any other term of this Agreement.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

21. Other matters

- (a) This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

- (b) Unless otherwise agreed in the Quote, all Intellectual Property Rights in any works created by the Supplier in connection with the Scope of Works vest in and remain the property of the Supplier.
- (c) This Agreement and written variations agreed in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of this Agreement.
- (d) Nothing in this Agreement restricts or limits the general obligation at law of both parties to mitigate any loss or damage which it may suffer or incur as a consequence of any breach of any provision of this Agreement.
- (e) This Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.
- (f) In entering into this Agreement, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of this Agreement.
- (g) If any provision of this Agreement at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (h) All parties will comply with all privacy obligations under any law or regulation.
- (i) The Supplier's failure or delay in exercising a power or right does not operate as a waiver of that power or right.
- (j) The variation or waiver of a provision of this Agreement by the Supplier, or the Supplier's consent to depart from a provision of this Agreement is ineffective unless in writing signed by the parties.
- (k) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on the Quote (or as varied pursuant to this clause) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by facsimile transmission to the facsimile number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by e-mail to the e-mail address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (l) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by e-mail before 4.00 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (m) The Customer may only change its postal or email address or fax number for service by giving notice of that change in writing to the Supplier.

Schedule 1 – Quote

Please see next page

[insert formal Tefol Group letterhead]

QUOTE

Thank you for the opportunity to provide you with a quote for [insert simple project name / part being Repaired / goods/services being provided].

If you wish to proceed with the services, please confirm your acceptance of this quote by either confirming your acceptance by email, or signing this document and returning it to us, at [insert].

Below is the proposed engagement outline, terms and quote:

ISSUE DATE	[insert date]
REFERENCE #	[quote number]
CUSTOMER ID	[your customer reference]
VALID UNTIL	[insert date or "30 days from date of issue"]

Customer Name	[insert company/or individual name]
Customer Legal Representative	[insert legal representative if customer is a company]
Customer Email	[insert email for service of documents]
Completion Date	[Date you anticipate the works to be completed] <i>Please note: This date is an approximate only. Any changes or variations to the services may alter the date for completion. We will use best efforts to notify you of any such change</i>
Scope of Work	[insert a detailed description of work to be completed by us for the Customer]
Terms and Conditions	<i>Our goods and/or services are provided to you in accordance with the Terms and Conditions of Service outlined above.</i>
Fee Structure	[Provide detail regarding fees, itemised list of fixed priced price service/s; and/or rates to be charged for the service/s – be as detailed as you can]
Additional Charges	[insert hourly rates/itemised rates that may be added to the 'Initial Quote' price for any variation to the services] <i>Additional Charges may be subject to change by us from time to time and include any additional costs or charges that we may incur in the course of supplying their services or goods to you.</i>
Specific Customer Requests	[this is where you note at a high level any Specific Customer Request for the service – i.e. did they ask you to provide specific warranties?] <i>These Specific Customer Requests to be completed by us in performing the Services must be read in conjunction with the Terms and Conditions outlined above.</i>
Customer Supplied Parts	[this is where you note at a high level any component or part that the Customer has provided for the Scope of Work] <i>These Customer Supplied Parts are to be read in conjunction with the Terms and Conditions outlined above and we make no warranties as to the suitability of these customer supplied parts and associated works.</i>
Invoice Terms	<i>We will issue you with an invoice on a ...</i> [insert the appropriate invoicing timing from clause 5(a) of the terms and conditions of service above, noting any specific date if known, or if this will be on monthly basis, weekly, daily basis, payment in advance etc]
Terms of Payment	<i>The Customer will pay the invoice:</i> a) <i>within 30 business days of the date on the invoice; or</i> b) <i>the date specified on the invoice as being the due date for payment.</i> [please amend this if necessary]
GST	<i>All prices quoted are exclusive of GST. In the event exemption cannot be claimed then GST will be charged. Prices exclude any duties and charges and all taxes duties and levies are to the customer's account.</i>
Expenses	<i>Expenses such as purchase of additional parts, travel and accommodation costs and any other costs incurred by us in the provision of their services not covered above will be charged at actual cost plus 10% unless otherwise stated. [please delete if not required]</i>

If you have any queries or changes regarding the above scope of work, please contact us and quote the Reference Number and your Customer ID.

Thank you again for your business and we look forward to being able to service you.

ACCEPTANCE OF QUOTATION

[insert formal Tefol Group letterhead]

Please confirm your acceptance of this Quote and the attached Terms and Conditions of Service by signing this document and returning to [insert], responding to this email confirming your acceptance or continuing to instruct us with regards to the Scope of Work.

Upon acceptance you agree to pay the Quote and any Additional Charges in accordance with the Terms and Conditions of Services.

Full Name: _____
Legal Representative of Customer

Signature: _____

Capacity: _____

Date: _____

If you sign on behalf of the Customer, you confirm that you are authorised to do so.