
Tekserv Contracting Pty Ltd– Terms & Conditions of Trade

1. Definitions

1.1 "Tekserv" means Tekserv Contracting Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Tekserv Contracting Pty Ltd.

1.2 "Client" means the person/s hiring Equipment (and/or buying Goods) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

1.3 "Goods" means all Goods or Services supplied by Tekserv to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "Equipment" means all Equipment (including, but not limited to, any crane/s, truck/s, vehicle/s, plant, tools, (or any accessories thereto), which is supplied on hire by Tekserv to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, hire agreement, or any other work authorisation form provided by Tekserv to the Client.

1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, hire agreement, or any other forms as provided by Tekserv to the Client.

1.6 "Price" means the Price payable for the purchase of Goods or for Equipment hire as agreed between Tekserv and the Client in accordance with clause 13 below.

Terms & Conditions Applicable to Equipment Hire

2. Hire Period

2.1 Hire charges shall commence from the time the Equipment is collected by the Client or dispatched from Tekserv premises and will continue until the return of the Equipment to Tekserv premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

2.2 If Tekserv agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Tekserv premises and continue until the Client notifies Tekserv that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

2.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

2.4 If at the end of the hire period the whole of the Equipment is not returned to Tekserv then the daily hire charge rate calculated on a pro-rata basis plus twenty percent (20%) shall be payable by the Client to Tekserv until the whole of the Equipment originally supplied is returned to Tekserv. The parties agree that this is a genuine estimate of damages which will be suffered by Tekserv should any Equipment not be returned by the Client when due.

2.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Tekserv confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Tekserv immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client. Upon notice of breakdown Tekserv undertakes to repair or (where necessary) supply suitable replacement Equipment as soon as Tekserv is reasonably able.

2.6 Off-hire numbers will only be issued when the Equipment has been either collected by Tekserv or returned to Tekserv premises.

3. Access for Delivery or Collection

3.1 The Client shall ensure that Tekserv has free and clear access to the worksite at which the Equipment is to be, or is, located. If there are any delays due to free and clear access not being available, then the Client shall be responsible for (and shall reimburse) Tekserv for all additional costs incurred by Tekserv in gaining suitable access to the worksite and/or Tekserv Equipment.

4. Risk for the Equipment

4.1 Tekserv retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.

4.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Tekserv for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.

4.3 Except where clause 10 applies the Client must prior to Delivery insure, Tekserv interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

5. Title to Equipment

5.1 The Equipment is and will at all times remain the absolute property of Tekserv and must be returned to Tekserv on request. The Client's right to use the Equipment are as a bailee only.

5.2 If the Client fails to return the Equipment to Tekserv as required under this agreement then Tekserv or Tekserv's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, and for such purpose break open any gate or lock and dismantle the Equipment without being guilty of any form of trespass, any without any liability to repair or re-instate items belonging to the Client. Any costs incurred by Tekserv as a result of Tekserv so repossessing the Equipment shall be charged to the Client. In

addition, Tekserv shall be entitled within three (3) days of such repossession to be paid by the Client all hire charges due, plus all other charges levied in accordance with this agreement.

6. Tekserv's Responsibilities

- 6.1 Tekserv shall have the right to determine the type of operation for which the Equipment may be reasonably used, and the suitability of the Equipment to be used for the works required. If at any time Tekserv believes that its Equipment is not suitable for the type of operation (or the type of works) that the Client is using the Equipment for then Tekserv shall have the right to suspend or terminate this agreement without any liability to the Client whatsoever.
- 6.2 Tekserv shall supply all Equipment in a safe, useable and (where applicable) roadworthy condition.
- 6.3 Hydraulic hose, fittings and electrical faults caused through age or wear and tear shall be borne by Tekserv unless the Client has contributed to the fault through misuse of the Equipment in which event the Client shall pay the cost of repairing the fault.

7. Client's Responsibilities

- 7.1 The Client shall:
- (a) Ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (b) Ensure that all persons driving, and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to Tekserv upon request;
 - (c) Check the equipment daily for oil, grease, water and battery levels and any sign of looseness or wear and shall at the Client's own cost maintain the Equipment as is required by Tekserv (including, but not limited to, maintaining (where applicable) water, battery, grease, oil and other fluid levels (using only products approved by Tekserv), and tyre pressures);
 - (d) Ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked, securely stored, and protected against acts of theft or vandalism when not in use;
 - (e) Be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Tekserv relating to any such matters or occurrences;
 - (f) Not carry any animals, illegal, prohibited or hazardous substances on, or in, the Equipment supplied without the prior written permission of Tekserv;
 - (g) Not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
 - (h) Refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling (as set out in the hire agreement) shall be charged to the Client in addition to the costs of the Equipment hire;
 - (i) Notify Tekserv immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification. The Client shall immediately take all steps to secure the Equipment so as to prevent any potential injury to person or property, and to prevent any potential or additional damage to the Equipment itself;
 - (j) Satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (k) Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Tekserv or posted on the Equipment;
 - (l) Comply with all occupational health and safety laws relating to the Equipment and its operation, display all safety signs and instructions (as required by law) and ensure that the same are complied with by Equipment operators;
 - (m) On termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Tekserv (or Tekserv's designated address);
 - (n) Keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to sell, sub-let, take a lien, grant any encumbrance, or create any form of security interest over the Equipment, or allow the Equipment to become a fixture (or any part of, a fixture). The Client shall immediately inform any person trying to take possession of, or attempting to seize the Equipment (for any reason), of Tekserv interest in, and ownership of, the Equipment, and must immediately notify Tekserv of any such event;
 - (o) Not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment. In the event that any decal on Tekserv's equipment has been removed then all costs incurred by Tekserv in replacing the same (should Tekserv wish to do so) will be charged to the Client;
 - (p) Use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (q) Immediately notify Tekserv should the Equipment become bogged or stuck (refer also 8.8(g));
 - (r) Not move the Equipment from the address where the Equipment was delivered to without the prior written approval of Tekserv;
 - (s) On a daily basis complete the pre-start safety checklist or any log book provided with the Equipment;

- (t) Provide to Tekserv (upon reasonable notice by Tekserv) free access to Tekserv's Equipment in order that Tekserv may examine or test the equipment or assess Equipment care and maintenance;
- (u) Wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Tekserv or the Equipment manufacturer;
- (v) Comply with all Environmental laws as in place from time to time and shall immediately rectify any breach of such laws caused by the use of the Equipment.

7.2 The Client must:

- (a) Not use the Equipment off shore, in an area where friable asbestos is present, or move the Equipment over water Tekserv prior written consent which may be reasonably withheld;
- (b) Use the Client's endeavours to ensure that the Equipment is not contaminated with any hazardous substance/s (including asbestos). The Client must advise Tekserv of any risk of hazardous substance contamination to the Equipment as soon as such risk becomes apparent. Where Equipment may have been subjected to contamination, the Client must (as soon as is reasonably possible) effectively decontaminate the Equipment, as well as provide Tekserv with written details of the decontamination processes utilised. If in Tekserv sole opinion the Equipment has not been properly decontaminated then Tekserv may require the Equipment to be decontaminated by a specialist, or if the specialist advises that the Equipment is unable to be decontaminated then the Client shall be charged for the full replacement cost of the Equipment. All cost incurred by Tekserv in engaging the specialist shall be charged to the Client.
- (c) When moving the Equipment comply with any and all safety guidelines advised by either Tekserv or the manufacturer of the Equipment to ensure the Equipment's safe loading, handling and transportation;
- (d) Not at any time attempt to repair Equipment without the prior consent of Tekserv. Where such consent is given if the repairs prove to be defective any way whatsoever, rectification to Tekserv satisfaction will be at the Client's expense.

7.3 Immediately on request by Tekserv the Client will pay:

- (a) The new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Tekserv;
- (b) All costs incurred in cleaning the Equipment (charged at \$75.00 + GST per hour);
- (c) All costs of repairing any damage caused through the Client's use of the Equipment i.e. The amount required to restore the Equipment to the Equipment's pre-hire status (excluding the first set of GET's – refer clause 9.2);
- (d) The cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;
- (e) The cost of repairing any damage to the Equipment caused by vandalism, theft or burglary, arson or act of god, or (in Tekserv reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (f) The cost of fuels and consumables provided by Tekserv and used by the Client;
- (g) Any insurance excess payable in relation to a claim made by either the Client or Tekserv in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Tekserv;
- (h) Where the Equipment has been lost or stolen any costs incurred by Tekserv in recovering the Equipment;
- (i) Any levies, fines, tolls, penalties, or other government charges arising out of the Client's use of the Equipment.

8. Wet Hire

- 8.1 Where the Equipment is to be operated on Public Holidays, Sundays or night shift, then an additional hourly loading shall be applied to the standard hire rate such additional rate will be advised in writing by Tekserv. A minimum four (4) hour shift is chargeable.
- 8.2 Any amount that Tekserv is required to pay its employees under any award (including, but not limited to, travelling time or costs, meals, accommodation etc.) Shall be charged to the Client in addition to the Price.
- 8.3 Minimum hire period of four (4) hours per day applies (this period may be increased dependant on project logistics and labour conditions). Sites in excess of forty-five (45) minutes driving time from Tekserv premises will (unless otherwise agreed in writing between Tekserv and the Client) incur additional charges to cover travel, accommodation, and associated overheads at Tekserv discretion.
- 8.4 A Travel charge is applicable to Water Trucks and/or Tippers travelling to/from a site each day.
- 8.5 In the event that the Client requests a stand down, no charge will apply to short term stand down periods (i.e. Where plant and operator are not required for the day) to sites within forty-five (45) minutes driving time from Tekserv premises, however, such a request must be either telephoned or emailed to Tekserv by 5.00pm the previous day or the specified minimum hire period will be charged.
- 8.6 Standby rates may apply when Tekserv is instructed by the Client to sit idle and remain onsite until a decision is made whether or not to resume work. The standby rate shall be calculated at fifty percent (50%) of Tekserv standard hourly rate/s.
- 8.7 In the event of Wet Hire the operator of the Equipment remains an employee of Tekserv but operates the Equipment in accordance with the Client's instructions. As such Tekserv shall not be liable for any actions of the operator where the operator is following the Client's instructions.
- 8.8 In the event of Wet Hire the following shall apply in relation to the above clauses:
 - (a) Clauses 7.1(a), (l), and (p) shall be the joint responsibility of both Tekserv and the Client; and
 - (b) Clauses 7.1(b), (c), (d), (f), (g), (k) and (u), shall be the responsibility of Tekserv or Tekserv employee/operator; and

- (c) Clauses 7.1(e) and (v) shall be the responsibility of Tekserv except where such costs or responsibilities are incurred through Tekserv employee/operator following the express instructions of the Client; and
- (d) Clause 7.1(h) shall be the responsibility of the Client unless otherwise agreed in writing; and
- (e) Clauses 7.1(j), (m), (n), (o), (r), (s), and (t) shall be the responsibility of the Client; and
- (f) Clauses 7.1(i) and (q) both Tekserv employee/operator and the Client must comply with these clauses; and
- (g) For clause 7.1(q) if the Equipment has become bogged or stuck due to the negligent actions of Tekserv employee/operator then Tekserv shall incur the costs of recovering the Equipment, otherwise the Client shall be liable for all such costs.

8.9 The clauses under 7.2 and 7.3 shall all be the Client's responsibility except where any losses, damages or costs to which those clauses pertain are caused by Tekserv or Tekserv employee/operator.

9. Dry Hire

- 9.1 Tekserv dry hire rates are calculated based on the following allowed usage:
- (a) Daily: eight (8) hours a day;
 - (b) Weekly: five (5) days a week (Monday to Friday). Weekend rates: A Pro rata day rate applies for days the Equipment is used;
 - (c) Monthly: one hundred and seventy-two (172) hours a month;
 - (d) Additional hours: will be charged off the hour meter at a pro rata hourly rate;
 - (e) Or as set out in the hire agreement, quotation, invoice, or any other forms provided by Tekserv to the Client.
- 9.2 The Client acknowledges and accepts that dry hire rates allow for the first set of ground engaging tools (GET's) only, any additional supply of (GET's) shall be charged to the Client's account.
- 9.3 In the event that the Client requests a stand down, such a request must be either telephoned or emailed to Tekserv before 9.00am each day. The Client acknowledges that:
- (a) Stand downs are only applicable to daily and weekly rates; and
 - (b) Stand downs are not applicable to monthly hire rates; and
 - (c) Tekserv shall not at any time back date stand downs; and
 - (d) Dry weather standby rates are calculated at fifty (50%) of the agreed rate.
- 9.4 Servicing of the Equipment shall be provided to the Client at no charge provided that the Client's worksite is located within 100kms of Tekserv depot. Where the Client's worksite is located beyond this distance then all Servicing expenses incurred by Tekserv (including, but not limited to, travel, labour, consumables, meals and accommodation) shall be charged to the Client. The same expenses (with the exception of consumables) shall apply to breakdowns where the Client's worksite is more than 100kms from Tekserv depot. The cost of replacement components or parts shall be Tekserv responsibility.

10. Damage Waiver/Insurance - Dry Hire

- 10.1 Subject to clause 10.2 a Loss, Theft, and Damage Waiver (LTD Waiver) charge (being an additional ten percent (10%) of Tekserv dry hire rates) will be applied to all dry hire.
- 10.2 The Client shall not be required to pay the LTD Waiver Fee if the Client produces a certificate of currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment. The COC must be provided to Tekserv prior to the supply of Equipment by Tekserv.
- 10.3 The LTD Waiver is not insurance but is an agreement by Tekserv to limit your liability in certain circumstance for loss, theft, or damage, to Tekserv Equipment to an amount called the LTD Waiver Excess. The LTD Excess is explained below.
- 10.4 Where the Client has paid the LTD Waiver Fee, Tekserv will waive Tekserv right to claim against you for loss, theft or damage to the Equipment if:
- (a) The Client has promptly reported the incident to the Police and Provided Tekserv with a written Police report;
 - (b) The Client has co-operated with Tekserv and provided Tekserv with details of the incident, including any written or photographic evidence that Tekserv requires;
 - (c) The loss, theft or damage does not fall into one or more of the circumstances in clause 10.6 and; (d) The Client has paid to Tekserv the LTD Waiver Excess.
- 10.5 The LTD Waiver Excess for each item of Equipment is the amount equal to:
- (a) One thousand dollars (\$1000) or (if the replacement cost of the Equipment is less than one thousand dollars (\$1000)) the replacement cost of the Equipment; OR
 - (b) Fifteen percent (15%) of the cost of the repairs (if the Equipment is partially damaged and can be repaired) OR fifteen percent (15%) of the full new replacement cost of the Equipment (if the Equipment is lost, stolen, or damaged beyond repair;
- Whichever is the greater.
- 10.6 Even if the Client has paid the LTD Waiver Fee, Tekserv shall not waive Tekserv rights to claim against the Client for loss, theft or damage to the Equipment and the LTD Waiver shall not apply if the loss, theft or damage:
- (a) Has arisen as a result of the Client breaching a clause of this hire agreement;
 - (b) Has been caused by a negligent act or omission by the Client;
 - (c) Has arisen as a result of the Client's use of the Equipment in violation of any law(s);
 - (d) Has been caused by the Client's failure to use the Equipment for its intended purpose or in accordance with Tekserv instructions or the Manufacturer's instructions;

- (e) Occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;
 - (f) Has been caused by a lack of lubrication or a failure to service or properly maintain the Equipment
 - (g) Has been caused by a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;
 - (h) Has been caused by the overloading of the Equipment or any components thereof;
 - (i) Is to motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extension leads with the electrical Equipment; (j) Is caused by exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc; (k) Is caused by vandalism;
 - (l) Is to tyres or tubes; (m) Is to glass;
 - (n) Is caused by the wilful actions of the Client, their employees, sub-contractors or agents.
- 10.7 The Client accepts full responsibility for and shall keep Tekserv indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage or loss of the Equipment, and/or damage or loss to property arising out of the use or provision of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons, particularly in the event that clauses 10.1 to 10.6 are voided for any reason.

General Terms and Conditions

11. Acceptance

- 11.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Equipment/Goods.
- 11.2 These terms and conditions may only be amended with Tekserv consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Tekserv.
- 11.3 Tekserv reserves the right to review (or to withdraw) any credit facility offered to the Client without any requirement to give prior notice of the same. If we withdraw a credit facility the Client shall have the right to terminate this agreement without notice provided that the Client;
- (a) Pays all amounts owing under the revoked credit facility in accordance with the terms upon which that credit facility was granted; and
 - (b) Pays all other monies due under this agreement (for the hire of Equipment hire charges shall remain payable by the Client until such time as all Equipment hired by the Client has been returned to Tekserv).

12. Change in Control

- 12.1 The Client shall give Tekserv not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Tekserv as a result of the Client's failure to comply with this clause.

13. Price and Payment

- 13.1 At Tekserv sole discretion the Price shall be either:
- (a) As indicated on any invoice provided by Tekserv to the Client; or
 - (b) The Price as at the date of delivery of the Equipment/Goods according to Tekserv current price list; or
 - (c) Tekserv quoted price (subject to clause 13.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days; or
 - (d) As set out in the hire agreement.
- 13.2 Tekserv reserves the right to change the Price if a variation to Tekserv quotation is requested, or where any variation is required as a result of additional works being required (or additional costs incurred) due to unforeseen circumstances such as poor weather conditions, limitations in accessing the work/delivery site, overseas transactions that are affected by variations in foreign currency rates of exchange, increases in freight and/or insurance charges, or any increase to Tekserv in the cost of Equipment, Goods, labour or fuel).
- 13.3 Any amount that Tekserv is required to pay its employees under any award (including, but not limited to, travelling time or costs, tolls, meals, accommodation etc.) Shall be charged to the Client in addition to the Price.
- 13.4 Unless otherwise agreed in writing all site-specific requirements (e.g. Medicals, inductions, or any special modifications required to be made to Equipment) shall be charged to the Client in addition to the Price at a rate of cost plus ten percent (10%). Any service vehicle modifications, operational guidance and/ or driver training, shall also be charged to the Client in addition to the Price.
- 13.5 At Tekserv sole discretion a non-refundable deposit may be required.
- 13.6 Time for payment for the Equipment/Goods being of the essence, the Price will be payable by the Client on the date/s determined by Tekserv, which may be: (a) On delivery of the Equipment/Goods;
- (b) The date specified on any invoice or other form as being the date for payment; or

- (c) Failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Tekserv.
- 13.7 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and Tekserv.
- 13.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Tekserv amount equal to any GST Tekserv must pay for any supply by Tekserv under this or any other agreement for the hire of the Equipment/sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

14. Delivery of Goods/Equipment

- 14.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
 - (a) The Client or the Client's nominated carrier takes possession of the Equipment/Goods at Tekserv address; or
 - (b) Tekserv (or Tekserv nominated carrier) delivers the Equipment/Goods to the Client's nominated address even if the Client is not present at the address.
- 14.2 At Tekserv sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 14.3 The Client must take delivery by receipt or collection of the Equipment/Goods whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Equipment/Goods as arranged then Tekserv shall be entitled to charge a reasonable fee for redelivery (and/or the storage of any Goods).
- 14.4 Tekserv may deliver the Equipment/Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 14.5 Any time or date given by Tekserv to the Client is an estimate only. The Client must still accept delivery of the Equipment/Goods even if late and Tekserv will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

15. Risk for Goods

- 15.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 15.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Tekserv is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Tekserv is sufficient evidence of Tekserv rights to receive the insurance proceeds without the need for any person dealing with Tekserv to make further enquiries.
- 15.3 If the Client requests Tekserv to leave Goods outside Tekserv premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

16. Title to Goods

- 16.1 Tekserv and the Client agree that ownership of the Goods shall not pass until:
 - (a) The Client has paid Tekserv all amounts owing to Tekserv; and (b) The Client has met all of its other obligations to Tekserv.
- 16.2 Receipt by Tekserv of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 16.3 It is further agreed that:
 - (a) Until ownership of the Goods passes to the Client in accordance with clause 16.1 that the Client is only a bailee of the Goods and must return the Goods to Tekserv on request.
 - (b) The Client holds the benefit of the Client's insurance of the Goods on trust for Tekserv and must pay to Tekserv the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) The Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Tekserv and must pay or deliver the proceeds to Tekserv on demand.
 - (d) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Tekserv and must sell, dispose of or return the resulting product to Tekserv as it so directs.
 - (e) The Client irrevocably authorises Tekserv to enter any premises where Tekserv believes the Goods are kept and recover possession of the Goods.
 - (f) Tekserv may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Tekserv.
 - (h) Tekserv may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

17. Personal Property Securities Act 2009 ("PPSA")

- 17.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

- 17.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment/Goods that has previously been supplied and that will be supplied in the future by Tekserv to the Client.
- 17.3 The Client undertakes to:
- (a) Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Tekserv may reasonably require to;
 - (i) Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) Register any other document required to be registered by the PPSA; or
 - (iii) Correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);
 - (b) Indemnify, and upon demand reimburse, Tekserv for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) Not register a financing change statement in respect of a security interest without the prior written consent of Tekserv;
 - (d) Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment/Goods in favour of a third party without the prior written consent of Tekserv;
 - (e) Immediately advise Tekserv of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 17.4 Tekserv and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 17.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7 Unless otherwise agreed to in writing by Tekserv, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8 The Client must unconditionally ratify any actions taken by Tekserv under clauses 17.3 to 17.5.
- 17.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

18. Security and Charge

- 18.1 In consideration of Tekserv agreeing to supply the Equipment/Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2 The Client indemnifies Tekserv from and against all Tekserv costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Tekserv rights under this clause.
- 18.3 The Client irrevocably appoints Tekserv and each director of Tekserv as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Client's behalf.

19. Defects in Goods, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 19.1 The Client must inspect the Equipment/Goods on delivery and must within seven (7) days of delivery notify Tekserv in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment/Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Tekserv to inspect the Equipment/Goods.
- 19.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 19.3 Tekserv acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 19.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Tekserv makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment/Goods. Tekserv liability in respect of these warranties is limited to the fullest extent permitted by law.
- 19.5 If the Client is a consumer within the meaning of the CCA, Tekserv liability is limited to the extent permitted by section 64A of Schedule 2.
- 19.6 If Tekserv is required to replace the Goods under this clause or the CCA, but is unable to do so, Tekserv may refund any money the Client has paid for the Goods.
- 19.7 If v is required to repair, rectify, re-supply, or pay the cost of repair, rectification or re-supplying any services/Equipment under this clause or the CCA, but is unable to do so, then Tekserv may refund any money the Client has paid for the services/Equipment but only to the extent that such refund shall take into account the value of any services/Equipment and Goods which have been provided to the Client which were not defective.

19.8 If the Client is not a consumer within the meaning of the CCA, Tekserv liability for any defect or damage in the Goods is:

- (a) Limited to the value of any express warranty or warranty card provided to the Client by Tekserv at Tekserv sole discretion;
- (b) Limited to any warranty to which Tekserv is entitled, if Tekserv did not manufacture the Goods; (c) Otherwise negated absolutely.

19.9 Subject to this clause 19, returns of Goods will only be accepted provided that:

- (a) The Client has complied with the provisions of clause 19.1; and
- (b) Tekserv has agreed that the Goods are defective; and
- (c) The Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and (d) The Goods are returned in as close a condition to that in which they were delivered as is possible.

19.10 Notwithstanding clauses 19.1 to 19.8(c) but subject to the CCA, Tekserv shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) The Client failing to properly maintain or store any Goods;

- (b) The Client using the Goods for any purpose other than that for which they were designed;
- (c) The Client continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) The Client failing to follow any instructions or guidelines provided by Tekserv; (e) Fair wear and tear, any accident, or act of God.

19.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Tekserv as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Tekserv has agreed to provide the Client with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 19.11.

19.12 Tekserv may in its absolute discretion accept non-defective Goods for return in which case Tekserv may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

19.13 Notwithstanding anything contained in this clause if Tekserv is required by a law to accept a return then Tekserv will only accept a return on the conditions imposed by that law.

20. Default and Consequences of Default

20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Tekserv sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 If the Client owes Tekserv any money the Client shall indemnify Tekserv from and against all costs and disbursements incurred by Tekserv in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Tekserv collection agency costs, and bank dishonour fees).

20.3 Without prejudice to any other remedies Tekserv may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Tekserv may suspend or terminate the supply of Goods/Equipment to the Client. Tekserv will not be liable to the Client for any loss or damage the Client suffers because Tekserv has exercised its rights under this clause.

20.4 Without prejudice to Tekserv other remedies at law Tekserv shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Tekserv shall, whether or not due for payment, become immediately payable if:

- (a) Any money payable to Tekserv becomes overdue, or in Tekserv opinion the Client will be unable to make a payment when it falls due;
- (b) The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

21.1 Tekserv may cancel these terms and conditions or cancel the delivery of Equipment or Goods at any time by giving written notice to the Client. On giving such notice Tekserv shall repay to the Client any sums already paid to Tekserv that directly relate to any part of the Client's order for the supply of the Equipment or Goods that will, as a result of cancellation by Tekserv, then not be met by Tekserv. Tekserv shall not be liable for any loss or damage that the Client may suffer (howsoever arising) from such cancellation.

21.2 For Equipment hire where the term of this agreement is not for a fixed period or becomes for an indefinite period then this agreement may be terminated by the Client giving Tekserv not less than fourteen (14) days written notice that they are terminating the agreement.

21.3 For Equipment hire upon the termination of this agreement for any reason whatsoever other than expiry of the terms of the agreement, the Client will immediately pay to Tekserv by way of liquidated damages, in addition to, and without prejudice to, and without prejudice to any other remedy of Tekserv contained in or implied by this agreement or general law, an amount equal to the aggregate of the:

- (a) Unpaid balance of the hire charge instalments comprising the total rental referred to in the schedule that would have been payable until the expiry of the terms of this agreement had this agreement not been terminated, brought to a present value by applying the discount rate (as defined below) to each instalment the period by which the day for payment thereof is, by virtue of this clause, brought forward together with an amount equal to the Stamp Duty, if any, payable in respect of such rebated total; and
 - (b) The cost and expenses incurred by Tekserv in reposing and storing, insuring, and registering the Equipment, and entering upon and removing the Equipment from land or premises where the Equipment was situated and making good any injury or damage caused to the said land or premises; and
 - (c) The cost and expenses of repairs reasonably necessary to bring the Equipment to proper working condition and repair apart from normal wear and tear.
- 21.4 For the purposes of clause 21.3 "discount rate" means a rate calculated to give Tekserv a rate of return equal to Tekserv original rate of return in respect of the hiring of the Equipment under this agreement had the hiring run until the expiration of the term and had all payments been received on their due date/s.
- 21.5 In the event that the Client cancels the delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Tekserv as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.6 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Act 1988

- 22.1 The Client agrees for Tekserv to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Tekserv.
- 22.2 The Client agrees that Tekserv may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) To assess an application by the Client; and/or
 - (b) To notify other credit providers of a default by the Client; and/or
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) To assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 22.3 The Client consents to Tekserv being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 22.4 The Client agrees that personal credit information provided may be used and retained by Tekserv for the following purposes (and for other purposes as shall be agreed between the Client and Tekserv or required by law from time to time):
- (a) The provision of Equipment/Goods; and/or
 - (b) The marketing of Equipment/Goods by Tekserv, its agents or distributors; and/or
 - (c) Analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment/Goods; and/or
 - (d) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) Enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Equipment hire and/or for the supply of Goods.
- 22.5 Tekserv may give information about the Client to a credit reporting agency for the following purposes:
- (a) To obtain a consumer credit report about the Client;
 - (b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 22.6 The information given to the credit reporting agency may include:
- (a) Personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) Details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) Advice that Tekserv is a current credit provider to the Client;
 - (d) Advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) That the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) Information that, in the opinion of Tekserv, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) Advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) That credit provided to the Client by Tekserv has been paid or otherwise discharged.

23. Unpaid Tekserv's Rights

- 23.1 Where the Client has left any item with Tekserv for repair, modification, exchange or for Tekserv to perform any other service in relation to the item and Tekserv has not received or been tendered the whole of any moneys owing to it by the Client, Tekserv shall have, until all moneys owing to Tekserv are paid:
- (a) A lien on the item; and
 - (b) The right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 23.2 The lien of Tekserv shall continue despite the commencement of proceedings, or judgment for any moneys owing to Tekserv having been obtained against the Client.

24. Construction Contracts Act 2004

- 24.1 At Tekserv sole discretion, if there are any disputes or claims for unpaid Goods or Equipment hire, then the provisions of the Construction Contracts Act 2004 may apply.
- 24.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

25. General

- 25.1 The failure by Tekserv to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Tekserv right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Tekserv has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 25.3 Subject to clause 19 Tekserv shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Tekserv of these terms and conditions (alternatively Tekserv liability shall be limited to damages which under no circumstances shall exceed the Price by the Client for the supply of Equipment or Goods).
- 25.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Tekserv nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 Tekserv may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.6 The Client agrees that Tekserv may amend these terms and conditions at any time. If Tekserv makes a change to these terms and conditions, then that change will take effect from the date on which Tekserv notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Tekserv to provide Equipment/Goods to the Client.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.