

AUSTRALIA - TERMS & CONDITIONS OF SUPPLY BY ENERMECH PTY LIMITED

INTRODUCTION

These terms (**Terms**) will apply (including to all Supply and Purchase Orders) from the commencement of EnerMech's engagement with the Company, which occurs on the earlier of:

- (a) the issuing of a Purchase Order by the Company;
- (b) the provision of any Supply by EnerMech; or
- (c) EnerMech otherwise indicating that a Supply will be provided by it.

The provision of any Supply by EnerMech will be deemed unconditional acceptance by the Company of these terms of supply and will constitute a binding contract between EnerMech and the Company according to these terms of supply and will apply to the exclusion of any other terms including any terms proffered by the Company..

Where a document provided by the Company purports to be made on or subject to terms and conditions other than these Terms, the Company agrees that such other terms and conditions are disregarded and form no part of the agreement between EnerMech and the Company unless EnerMech has expressly agreed otherwise in writing.

1. DEFINITIONS AND INTERPRETATION

In these Terms:

"Approval" means approvals, certificates, licenses, consents, permits, assessment notices and requirements of organisations having jurisdiction in connection with the Plant/Equipment or the carrying out of any work in relation to the Supply (including the transportation, loading, unloading, delivery of the Plant/Equipment and operation, maintenance or repair of the Plant/Equipment), including fees and charges payable in connection with such approvals.

"Assessment Period" means:

- (a) where the Security of Payment Legislation applies to a payment claim, the longest period permitted for the service of a corresponding payment schedule under that Security of Payment Legislation; or
- (b) if the Security of Payment Legislation does not apply, 10 Business Days.

"Breakdown" means, in respect of an item of Plant/Equipment, any circumstances in which such Plant/Equipment is not operating:

- (a) in accordance with the Purchase Order or these Terms; or
- (b) otherwise in a manner in which it could reasonably be expected to operate (having regard to the requirements of the Purchase Order and these Terms).

"Business Day" means a day that is not:

- (a) a Saturday or Sunday; or
- (b) wholly or partly observed as a public holiday throughout the Jurisdiction.

"Company" means any person who hires Plant/Equipment or Labour from the Supplier, including pursuant to a Purchase Order.

"Contamination" means a solid, liquid, gas, odour, heat, sound, vibration, radiation, pollutant or substance of any kind which makes or may make any segment of the environment (including physical factors of land, air, water and the ecological system at, on, in, under, above, around, nearby or affecting the Site) unsafe, unfit or harmful for habitation, use or occupation by any person or animal or not comply with any Laws or otherwise damages or may damage the environment.

"Delivery Address" means the delivery address specified in the Purchase Order, or other address notified by EnerMech to the Company as such.

"Demobilisation Cost" means the amount identified as such by the EnerMech.

"Encumbrance" means any lease, mortgage, charge, lien, security, retention of title arrangement or other encumbrance.

"EnerMech" means EnerMech Pty Limited ACN 136 435 062 and or any associated entity.

"Entitlement" includes any claim, right or entitlement for the payment of money (including damages) or any other allowance:

- (a) under, arising out of, or in connection with, the Purchase Order or these Terms;
- (a) arising out of, or in connection with, the Supply or either party's conduct before the date of the Purchase Order; or
- (b) otherwise at law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including on a quantum meruit basis.

"Hire Finish Date" means the date specified in the Purchase Order as hire finish date, or such other date as is agreed to by EnerMech in writing from time to time as such.

"Hire Fee" means the sum of:

- (a) all Hire Rates;

- (b) all Standby Rates;
- (c) all Mobilisation Costs; and
- (d) all Demobilisation Costs.

"Hire Rates" means the rates and charges offered by EnerMech.

"Hire Start Date and Time" means the date and time specified in the Purchase Order as the hire start date and time, or such other date and time as may be agreed by EnerMech in writing from time to time.

"Insolvency Event" means the happening of any of these events in relation to the Company:

- (a) the Company informs EnerMech or the Company's creditors generally, in writing or orally, that the Company is insolvent or is financially unable to proceed with the Purchase Order or the Supply, or any part thereof;
- (b) where the Company is a body corporate and:
 - (i) notice is given of a meeting of creditors with a view to the Company entering a deed of company arrangement, entering a scheme of arrangement or composition with creditors or entering administration;
 - (ii) the Company enters into a deed of company arrangement, scheme of arrangement or composition with creditors;
 - (iii) a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator is appointed;
 - (iv) a winding up order is made in respect of the Company;
 - (v) the Company resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up) or placed under administration;
 - (vi) the Company is deregistered under the *Corporations Act 2001* (Cth); or
 - (vii) the Company becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth); or
- (c) where the Company is a natural person and:
 - (i) the Company authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors or has a sequestration order made under Part X of the *Bankruptcy Act 1966* (Cth);
 - (ii) a person holding a security interest in assets of the Company enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets;
 - (iii) the Company has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iv) the Company is made bankrupt; or
 - (v) the Company commits an act of bankruptcy.

"Jurisdiction" means the Australian State or Territory where the Site is located, or means Western Australia if there are multiple Sites within Australia and also means Western Australia where any Site is located in a legal jurisdiction other than Australia.

"Labor" means the provision of any service by a natural person on behalf of EnerMech to or for the benefit of the Company as an employee, subcontractor or agent of EnerMech.

"Law" includes:

- (a) any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local (including the Safety Legislation and the Safety Requirements);
- (b) common law;
- (c) equity; and
- (d) Approvals.

"Market Value" means, for an item of Plant/Equipment:

- (a) the estimated amount for which that item of Plant/Equipment should exchange between a willing buyer and seller in an arm's length transaction after proper marketing wherein both parties have acted knowledgeably, prudently and without compulsion; or
- (b) where it is not possible to readily ascertain the amount under paragraph (a), the replacement cost as determined by EnerMech of that Plant/Equipment, less due allowance for depreciation, taking into account the anticipated useful life of that Plant/Equipment and the nature of its usage.

"Mobilisation Cost" means the amount identified as such by EnerMech.

"Period of Hire" has the meaning given to that term in clause 6.

"Plant/Equipment" means any plant and/or equipment supplied by EnerMech, or to be supplied by EnerMech, and includes any plant and/or equipment specified in the Purchase Order.

"Policies" means EnerMech's workplace policies, plans, procedures and practices as amended from time to time including but not limited to business conduct, personal safety, operational safety, work health and safety, environmental, quality, traffic management and equal opportunity policies and any relevant policies of a Principal, but only to the extent that such policies are not inconsistent with EnerMech's own policies.

"PPS Act" means the *Personal Property Securities Act 2009* (Cth) and includes:

- (a) any regulations made at any time under the PPS Act;

- (b) any amendment to any of the above, made at any time; and
- (c) any amendment made at any time to any other legislation as a consequence of the PPS Law.

"Purchase Order" means a purchase order issued by EnerMech to the Company in connection with a Supply.

"Reference Date" means the 25th of each month after the commencement of the Period of Hire up until the last day of the Period of Hire, or if the Security of Payment Legislation applies and mandates an earlier date, that date shall apply.

"Safety Legislation" means:

- (a) any legislation covering work health and safety, mining safety, petroleum and gas safety, environment protection or dangerous goods safety that is applicable to the location and the operation of the Plant/Equipment;
- (c) regulations made under that legislation;
- (d) any directions on safety or notices issued by any relevant authority;
- (e) any code of practice or compliance code or industry standard appropriate or relevant to the works undertaken by the Supplier; and
- (f) without limiting the generality of the above, where the Jurisdiction is in:
 - (i) New South Wales – *Work Health and Safety Act 2011* (NSW);
 - (ii) Victoria – *Occupational Health and Safety Act 2004* (Vic);
 - (iii) Queensland – *Work Health and Safety Act 2011* (Qld);
 - (iv) Western Australia – *Work Health and Safety Act 2020* (WA);
 - (v) South Australia – *Work Health and Safety Act 2012* (SA);
 - (vi) Tasmania – *Work Health and Safety Act 2012* (Tas);
 - (vii) the Australian Capital Territory – *Work Health and Safety Act 2011* (ACT); or
 - (viii) the Northern Territory – *Work Health and Safety (National Uniform Legislation) Act 2011* (NT),and includes any regulations of the relevant Acts.

"Safety Requirements" means any direction, instruction, request or requirement relevant or necessary for compliance by the Company or EnerMech with Safety Legislation or otherwise in respect of safety at a Site.

"Security of Payment Legislation" means where the Jurisdiction is:

- (a) the Australian Capital Territory - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (b) New South Wales – the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (c) the Northern Territory – the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (d) Queensland – the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (e) South Australia – the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (f) Tasmania – the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (g) Victoria – the *Building and Construction Industry Security of Payment Act 2002* (Vic); and
- (h) Western Australia – the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

"Security Interest" has the meaning given to that term in clause 16(a).

"Site" means the physical location upon which the Plant/Equipment is to be used or operated. including any location identified as such in the Purchase Order.

"Standby Rate" means the relevant rate identified as such by EnerMech.

"Supply" means the provision of Plant/Equipment, with or without Labour by EnerMech to the Company, including as may be detailed in a Purchase Order.

Unless the context otherwise requires:

- (a) including and similar expressions are not words of limitation;
- (b) a reference to a statute, regulation, code or other law or a provision of any of them includes any amendment or replacement of it, and another regulation or other statutory instrument made under it, or made under it as amended or replaced;
- (c) if any day on or by which a person must do something under these Terms is not a Business Day, then the person must do it on or by the next Business Day; and
- (d) a reference to 'month' means calendar month and 'day' means calendar day.

No rule of construction applies to the disadvantage of a party on the basis that the party put forward these Terms or any part.

Any provision of these Terms which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of these Terms.

Capitalised terms have the meanings given in clause 1 of these Terms.

Notwithstanding any other provision of these Terms, the Company is responsible for carrying out the activities, paying for the costs and expenses, and satisfying the requirements and obligations, identified in the Purchase Order as being the responsibility of the Company.

EnerMech may, either itself or by a third party, carry out an obligation under these Terms which the Company has failed to perform, or which EnerMech determines is required to be performed due to any act, omission or default of the Company or its employees, agents or subcontractors. The costs incurred by EnerMech in doing so will be a debt due from the Company to EnerMech as and from day on which EnerMech incurred the cost.

2. HIRE FEE

The Company must pay the Hire Fee for the Plant/Equipment and Labour in accordance with these Terms directly to EnerMech or to another entity as directed by EnerMech.

3. CONDITION OF PLANT/ EQUIPMENT

3.1 Assurances as to condition

EnerMech will ensure that the Plant/Equipment:

- (a) is in good repair and working order and is in a safe and serviceable condition;
- (b) is suitably registered and licensed for operation, including in accordance with Law, where applicable;
- (c) is free from defects; and
- (d) as at the Start Date and Time, is in proper working order.

3.2 Documentation of condition of Plant/Equipment

EnerMech will, upon written request by the Company acting reasonably, produce appropriate documentation to confirm that the Plant/Equipment is in a safe, serviceable condition, and complies with relevant Law and Australian Standards.

4. SITE

The Company will give EnerMech sufficient access to the Site to meet EnerMech's needs.

5. HEALTH AND SAFETY

5.1 Risk Assessment

EnerMech will ensure that the known risks to the health or safety of any persons arising from the use of the Plant/Equipment have been identified to the Company and the Company must ensure that all relevant control measures have been put in place to eliminate or minimise risks associated with the use of the Plant/Equipment. EnerMech may, at the request of the Company, provide risk assessment documentation to the Company at delivery of the Plant/Equipment to the Delivery Address.

5.2 Provision and maintenance of Plant/Equipment

EnerMech will maintain the Plant/Equipment prior to the Hire Start Date and Time to enable the Company to use the Plant/Equipment in a manner that is safe and without any risk to health. The Company must ensure that all Plant/Equipment is maintained in a condition that is safe and without risk to any person during the Period of Hire.

5.3 EnerMech's provision of information

EnerMech will provide current information to the Company on the conditions, requirements and recommendations for the safe and proper use and storage of the Plant/Equipment; and the risk to health and safety of all persons from the use of the Plant/Equipment.

5.4 EnerMech to inform the Company

EnerMech will inform the Company in a timely manner of all relevant information which becomes known to EnerMech during the Period of Hire concerning the safe use, supply, maintenance or storing of the Plant/Equipment. EnerMech will also provide information to the Company in relation to such Plant/Equipment that EnerMech is required by Safety Legislation to provide, including by reporting to the Company any notifiable or reportable incidents as defined under the Safety Legislation, and which it becomes aware of during the Period of Hire.

6. PERIOD OF HIRE

EnerMech agrees to hire the Plant/Equipment to the Company on and from the Hire Start Date and Time until the Hire Finish Date ("**Period of Hire**"), in return for the prompt payment of the Hire Fee by or on behalf of the Company.

7. DELIVERY AND RETURN

On the Hire Start Date and Time, EnerMech will either deliver the Plant/Equipment to a location at the Delivery Address; or make the Plant/Equipment available to the Company for collection at a location agreed to in writing by EnerMech.

Where EnerMech is required to deliver the Plant/Equipment, EnerMech will, unless otherwise specified in a Purchase Order, procure: the transit of the Plant/Equipment to and from the Delivery Address; and the Company shall be responsible for safely off-loading the Plant/Equipment at the Delivery Address.

Delivery will be deemed to have occurred when the Plant/Equipment has either been delivered to the Delivery Address in accordance with this clause; or had been collected by the Company.

Upon Delivery EnerMech and the Company will, where practicable, jointly inspect the Plant/Equipment and record the details of that inspection.

At the end of the Period of Hire the Company must either procure the transit of the Plant/Equipment to a location agreed in writing by EnerMech or if EnerMech so directs make the Plant/Equipment available to EnerMech at the Delivery Address for collection, or at another location agreed in writing by EnerMech.

Upon collection or return of the Plant/Equipment, EnerMech and the Company will, where practicable, jointly inspect the Plant/Equipment and record the details of that inspection.

8. COMPLIANCE

EnerMech will comply with and satisfy all relevant Law, and, unless otherwise specified in a Purchase Order and these Terms, apply for, obtain and maintain, all Approvals necessary for the Supply (including the transportation, loading, unloading, delivery, operation, maintenance or repair of the Plant/Equipment).

The Company shall:

- (a) use the Plant/Equipment in accordance with these Terms and only for the purposes for which the Plant/Equipment was designed;
- (b) comply with all manufacturer's requirements, Approvals, every relevant Law and every direction of the Supplier as to use and storage of the Plant/Equipment; and
- (c) unless the Company obtains prior written consent from the Supplier, the Company will not alter, modify or attach anything to the Plant/Equipment.
- (d) The Company must notify EnerMech as soon as it becomes aware of any breach, or potential breach of this clause 8, the Policies, or any Law.

8.2 Modern Slavery

The Company must take all reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Hire, including in the operations and supply chains used in the carrying out its operations. If at any time the Company becomes aware of Modern Slavery practices arising in connection with the Hire, including in the operations and supply chains used in the using the Plant/Equipment, the Company must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities with which it is engaged. For the purposes of this clause, Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

8.3 Anti-Bribery

The Company must not directly or indirectly give or offer to any person any gift, gratuity, bribe or other thing of value which could be construed as corrupt practice to any person working within a commercial organisation, a government entity, a political party, or a political party candidate for the purpose of influencing any act or inducing any person working within a commercial organisation, a government entity or a political party to use his, her or its influence to assist in obtaining or retaining business in any country in a manner which is illegal or which could subject EnerMech to civil or criminal penalties, or which is inconsistent with EnerMech's Policies.

The Company agrees that it shall take no action or use or spend any funds, regardless of the source, in violation of all applicable including without limitation section 70.2 of the *Criminal Code Act 1995* (Cth).

The Company must ensure that any person or subcontractor associated with the Supplier who is using the Plant/Equipment is bound terms equivalent to those imposed on the Company in this clause.

8.4 Import and Export Compliance

The Company shall not perform or render Services or take any actions in respect of the Hire which are contrary to the export control Laws and regulations of the Jurisdiction in which the Services are rendered.

The Company acknowledges that said export control Laws may affect not only the Hire but also technical data and plans and specifications dealing with the Hire. The Company shall immediately notify EnerMech if the Company knows or has a reasonable suspicion that any Plant/Equipment, and/or technical data, plans, or specifications may be redirected to other countries in violation of export control Laws. The Company must use its best endeavours to obtain all necessary export and other licences, consents, clearances and/or authorisations (the "Export Licences") required in order to fulfil its obligations under these Terms. The Company shall, in a timely manner and at its own costs and expense provide EnerMech such end-user certificates, end-user undertakings or other information as EnerMech may request in support of obtaining and maintaining and Export Licences.

The Company shall be responsible for complying with any Laws governing the importation of the Plant/Equipment into any Country or Jurisdiction other than Australia and for the payment of any duties or taxes. The Company warrants that it shall not sell, distribute, disclose, release, receive or otherwise transfer any item or technical data obtained pursuant to these Terms or in violation of relevant Laws including:

- (a) US Export Administration Regulations and the International Traffic in Arms Regulations (ITAR);
- (b) applicable EU export control regulations, sanctions and embargoes administered;
- (c) applicable US sanctions and embargoes administered by the US.

9. INTELLECTUAL PROPERTY

EnerMech grants the Company a royalty free, irrevocable licence to use EnerMech's intellectual property rights existing at the date of Supply to the extent necessary for the Company to make use of the Plant/Equipment for all proper purposes in connection with the Supply.

10. COMPANY'S RESPONSIBILITY FOR PLANT/EQUIPMENT

The Plant/Equipment will at all times remain the property of EnerMech. The Company must not register any Encumbrance or cause any Encumbrance to be registered on any Plant/Equipment supplied by EnerMech pursuant to any Purchase Order or otherwise.

The Company is responsible for maintenance, repair or replacement of parts of the Plant/Equipment including routine maintenance, all oiling, greasing and other care and maintenance of the Plant/Equipment or repairs required to ensure its satisfactory performance or for any other purpose during the Period of Hire unless otherwise specified in the Purchase Order as being the responsibility of EnerMech.

The Company is responsible for, and bears the risk of, any loss of or damage to the Plant/Equipment (including in respect of theft and damage) on and from the Hire Start Date and Time and for any Contamination which may occur from or in connection with the Company's use of the Plant/Equipment. EnerMech accepts no responsibility for loss or damage to the Plant/Equipment and the Company unconditionally releases EnerMech from, and will have no Entitlement against EnerMech, arising out of, or in connection with such loss or damage. The Company shall continue to pay the Hire Fee in accordance with these Terms notwithstanding such loss or damage.

If any damage to Plant/Equipment is caused or contributed to by the Company or its employees, subcontractors or agents, the Company must, at its own cost, remedy the damage to the satisfaction of EnerMech. If the Company fails to remedy damage to Plant/Equipment, EnerMech may perform those obligations itself, or through others, and all costs and expenses incurred by EnerMech in performing those obligations will be a debt due and owing from the Company to EnerMech with effect from the day when EnerMech incurs any of such cost.

The Company indemnifies the Supplier against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, regardless of cause, arising out of or in connection with the Plant/Equipment, the Purchase Order or the Supply.

Notwithstanding the foregoing, the EnerMech's total cumulative liability under or in connection with this Purchase Order, whether arising in contract, tort (including negligence) or otherwise, shall not exceed 100% of the Hire Fee paid by the Company to EnerMech in respect of this agreement.

11. INSURANCES

11.1 Insurance other than for Plant/Equipment

The Company must at all times have in place:

- (a) public liability insurance (in the amount not less than \$20,000,000) in the name of the Company, noting the interests of EnerMech and of any other person as required by EnerMech, to cover each of them for their respective rights and interests and covering their liabilities to third parties and the Company's liability to EnerMech for loss of or damage to property (including any indirect or consequential loss) and death of or injury to any person; and
- (b) workers compensation or employee liability insurance as required by Law, providing cover against statutory and common law liability for death of or injury to persons employed by the Company, and where permitted by Law, extended to provide indemnity for the Company's statutory and common law liability to EnerMech's employees (including a waiver of subrogation in favour of EnerMech's employees).

The Company must maintain each such policy for the duration of the Period of Hire. Any public liability insurance policy that the Company is required by these Terms to have in place must contain cross-liability and waiver of subrogation provisions (including a provision that a failure by any insured to observe and fulfil the terms of the policy (including because of any non-disclosure, breach of any duty or act or omission) shall not prejudice the right of any other insured to claim under the insurance).

11.2 Registration and Insurance of Plant/Equipment

EnerMech shall ensure during the Period of Hire that the Plant/Equipment is registered as required by Law and that registered Plant/Equipment is insured as required by Law.

The Company must effect insurance to cover:

- (a) loss or damage to any Plant/Equipment (on the basis of the Market Value of such Plant/Equipment) which:
 - (i) has a Market Value of more than \$20,000 but less than \$2.5 million; and
 - (ii) is provided by EnerMech under a Purchase Order; and
- (b) where the Purchase Order provides that the Company is responsible for effecting Plant/Equipment insurance in addition to that in paragraph (a), loss or damage to any Plant/Equipment (on the basis of the Market Value of such Plant/Equipment) not referred to in paragraph (a).

All Plant/Equipment is deemed to have a Market Value of \$20,000 or more unless and until EnerMech notifies the Company otherwise.

11.3 Proof of Insurance

The Company must, before commencement of the Supply, and when otherwise requested by EnerMech, provide to the Supplier evidence (satisfactory to EnerMech) that any insurance cover required by these Terms has been effected and is current (including copies of the certificate of currency, and, if required by EnerMech, the policy of insurance).

If the Company fails to produce evidence in accordance with the first paragraph of this clause to the satisfaction and approval of EnerMech, then EnerMech may effect and maintain the insurance and pay the premiums. The cost to EnerMech of effecting and maintaining any such insurance will be a debt due from the Company to EnerMech as and from the day on which EnerMech incurs that cost.

12. CHANGES TO PLANT/EQUIPMENT

The Company may at any time by notice in writing propose changes to the quantities or type of the Plant/Equipment or the Period of Hire.

Promptly following receipt of any such proposal by EnerMech, it will notify the Company whether it consents to the relevant proposal and the changes set out in the relevant proposal.

If EnerMech fails to respond to a Company's proposal within 10 Business Days following receipt of such proposal, then EnerMech will be deemed to have notified the Company that it does not consent to the proposal and does not consent to any changes.

If EnerMech consents to any such changes:

- (a) the provision of the Plant/Equipment will be deemed to be amended as set out in the relevant proposal; and
- (b) EnerMech will be entitled to any additional Mobilisation Costs and Demobilisation Costs arising in respect of any additional Plant/Equipment required as part of the relevant proposal.

13. HIRE RATES AND COSTS OF PLANT/EQUIPMENT

13.1 Mobilisation and Demobilisation Cost

The parties acknowledge and agree that the:

- (a) Mobilisation Cost will be payable by the Company in respect of each delivery and unloading of Plant/Equipment at the Delivery Address; and
- (b) Demobilisation Cost will be payable by the Company in respect of each removal of Plant/Equipment from the Delivery Address.

13.2 Breakdowns

EnerMech undertakes to respond as soon as reasonably practicable to any proper report or notification from the Company of a Breakdown.

If, following a Breakdown, EnerMech determines that the relevant Plant/Equipment is not in good working condition and thereby unavailable for the Company's use, the Company shall not thereafter be liable to pay the Hire Fee for that particular piece of Plant/Equipment until such time as EnerMech advise the Company that it is again available for the Company's use.

14. PAYMENT

EnerMech

may claim:

- (a) the Hire Fee applicable to, or payable for:
 - (i) in respect of the first payment claim, the period since the Hire Start Date and Time; and
 - (ii) in all other instances, the period since the previous payment claim,
- (b) in the case of the first payment claim and any payment claim immediately following a change referred to in clause 12, the Mobilisation Cost;
- (c) in the case of the final payment claim and any payment claim immediately following a change referred to in clause 12, the Demobilisation Cost; and
- (d) and any other amounts which are payable by the Company to EnerMech under or in connection with these Terms, and will do so in accordance with these Terms.
- (e) where the Security of Payment Legislation applies, the due date specified in the relevant Security of Payment, or
- (f) where the Security of Payment Legislation does not apply, within 15 Business Days

EnerMech may submit claims for payment on each Reference Date. Following receipt of a claim for payment, the Company may, within the Assessment Period following receipt of EnerMech's claim for payment, issue EnerMech with a payment schedule setting out the Company's determination of the moneys due to the Supplier and which the Company proposes to pay. The Company must pay EnerMech, the amount specified in the payment schedule.

If the Company does not issue a payment schedule, the Company must pay EnerMech the full amount claimed in the payment claim by the due date specified in the preceding paragraph.

Interest will accrue on daily rests and be payable on any overdue amounts under these Terms at a rate of 18% per annum.

15. DEFAULT OF THE COMPANY

The following are acts of default by the Company for the purposes of this clause 15:

- (a) the Company breaches any term, condition or warranty of or in these Terms, including failing to pay any amount provided for in these Terms when such amount is due; or
- (b) an Insolvency Event occurs, or the Company advises EnerMech that it is unable to pay its debts or part of them as they fall due.

If an act of default occurs, EnerMech may, by written notice to the Company, terminate the Supply.

If EnerMech has exercised its right to terminate the Supply:

- (c) EnerMech will thereafter not be obliged to provide any further Supply to the Company;
- (d) EnerMech shall be entitled to:
 - (i) the Hire Fee to the date the Plant/Equipment is returned to EnerMech;
 - (ii) Demobilisation Costs; and
 - (iii) any other amount incurred by EnerMech as a result of or incidental to the termination, including any loss of profit; and

- (e) in addition to EnerMech's remedies and rights and the Company's liabilities as set out above, EnerMech will have other remedies and rights, and the Company will have any other liabilities as they would respectively have at Law had the Company committed an act of repudiation and EnerMech elected to accept that repudiation and recover damages.

If the Company breaches (including repudiates) these Terms, nothing in this clause 15 will prejudice the right of EnerMech to recover damages or exercise any other right or remedy.

16. PERSONAL PROPERTY SECURITIES ACT

- (a) The interpretation of this clause, meaning of terms and use of references in this clause in relation to security or Security Interests, shall be consistent with the interpretation, terms, meanings and use of references under the PPS Act, and for the purposes of the PPS Act.
- (b) In all cases, EnerMech retains all title and possession of Plant/Equipment supplied by it in connection with a Purchase Order and pursuant to these Terms.
- (c) The Company acknowledges and agrees that:
 - (i) EnerMech is a Secured Party in relation to the Plant/Equipment, and may register its interest on the Register established under the PPS Act as a Security Interest or a Purchase Money Security Interest, at the discretion of EnerMech;
 - (ii) EnerMech, by notice to the Company, require the Company to take all steps that EnerMech considers necessary or desirable to ensure its Security Interest in the Plant/Equipment is enforceable and to perfect or better secure EnerMech's position under these Terms as a first ranking security;
 - (iii) the Company must comply with a notice from EnerMech under this provision at the cost of the Company;
 - (iv) the Company must promptly inform EnerMech of any change to information that it provides to EnerMech under this clause;
 - (v) EnerMech is not required to give any notice or provide reports of any documents under the PPS Act (including notice of a verification statement) unless the notice is required by law and cannot be excluded; and
 - (vi) to the extent permitted by law the Company waives its rights pursuant to sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, and 133 of the PPS Act, and those sections will not apply to the enforcement of any Security Interest.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this sub clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) EnerMech agrees to waive any right it may have, or but for this sub clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

17. NOTIFICATION OF CLAIMS

- (a) Within 10 Business Days after the Company becomes, or ought reasonably to have become, aware of any Entitlement arising out of, or in connection with these Terms the Company must give EnerMech a prescribed notice under clause (b) below or a notice of dispute under clause 18.
- (b) The prescribed notice is a written notice expressly specifying that the Company proposes to make a claim, and the direction or other fact, matter or circumstance on which the claim is based.
- (c) Within 5 Business Days after giving the prescribed notice in accordance with clauses 17(a) and 17(b), the Company must give EnerMech a written claim which must include full particulars of the direction or other fact, matter or circumstance on which the claim is based, the legal basis of the claim (including by reference to specific provisions of these Terms), the facts relied upon in support of the claim, and details of any amount of money claimed and how it has been calculated.
- (d) If the Company fails to comply with this clause 17 (including the timing and content requirements), then to the extent permitted by Law, EnerMech will not be liable on any claim by the Company and the Company will have no Entitlement and releases EnerMech from, and will be absolutely barred from making any claim against EnerMech, arising out of, or in connection with the direction or fact, matter or circumstance as the case may be.

18. DISPUTE RESOLUTION PROCEDURE

18.1 Notice of dispute

If a dispute arises between EnerMech and the Company out of or in connection with the Supply, then either party may serve the other with a notice of dispute in writing, specifying:

- (a) the particularised assertion of fact giving rise to the entitlement (including reference to relevant provision(s) in these Terms);
- (b) the legal basis and cause of action;
- (c) the relief the party seeks; and
- (d) the calculation of any amounts of money or extensions of time claimed,

(Notice of Dispute).

18.2 Dispute resolution process

Any dispute between EnerMech and the Company must be referred:

- (a) initially for resolution by senior executives of EnerMech and the Company who must use their best endeavours to resolve the dispute within 10 Business Days of the giving of Notice of Dispute by a party; and
- (b) if the dispute is not resolved in accordance with clause 18.2(a), then either party may request that the dispute is referred to an expert for determination in accordance with clause 18.3.

18.3 Expert Determination

The expert shall be nominated by EnerMech in its sole and absolute discretion within the later of 10 Business Days after:

- (a) the conclusion of the meeting in clause 18.3; or
- (b) 10 Business Days of the giving of the Notice of Dispute has elapsed.

If the expert nominated by EnerMech declines the appointment, EnerMech shall in its sole and absolute discretion nominate another expert, and so on.

The expert will determine all procedure for the expert determination, but in making a determination the expert shall:

- (c) act as an expert and not as an arbitrator;
- (d) give due weight to any written submissions or representations made by a disputing party within any reasonable time limit prescribed by the expert; and
- (e) give written reasons for his or her decisions.

The parties agree:

- (f) in the absence of any manifest error, the decision of the expert on disputes up to a maximum value of \$100,000 will be final and binding upon the parties and not subject to review; and
- (g) for disputes in excess of \$100,000 and in the absence of any manifest error, the decision of the expert will be final and binding on the parties and not subject to review, if neither of the parties has taken any steps to enforce a right or remedy by instituting proceedings relating to the dispute within 28 days of the written decision of the expert.

Except where the parties otherwise agree in writing each bears its own costs and the cost and expense of the expert determination equally.

18.4 Continued performance required

Despite the existence of a dispute, the Company must continue to perform its obligations.

18.5 Urgent interlocutory relief

A party may commence court proceedings relating to any dispute in connection with the Supply at any time where that party seeks urgent interlocutory relief.

19. GST

19.1 Definitions

In this clause 'Supplier' means the entity providing the Supply.

All capitalised terms in this clause 19 not otherwise defined have the same meaning as defined in the GST Act.

19.2 GST exclusive

The consideration for the Supply does not include GST.

19.3 Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

20. APPLICABLE LAW

These Terms are governed by, and construed in accordance with, the laws of the Jurisdiction and, subject to clause 18, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction (and courts entitled to hear appeals from those courts).

21. EXCLUSION OF CONSEQUENTIAL LOSS

Notwithstanding anything to the contrary in these Terms, whether express or implied, whether under contract or at common law and notwithstanding any breach of contract, negligence or other breach of duty by or on the part of EnerMech or by any person or persons for whom EnerMech may be responsible, EnerMech shall not be liable to the Company in respect of any Consequential Loss.

For the purposes of this clause "Consequential Loss" means any, consequential or indirect loss or liability of any kind including any loss of revenue, loss of profits, loss of opportunity to make profits, loss of data, loss of rent, loss of reputation, loss of business, loss of business opportunity or any increase in expenses and costs, wasted expenditure, loss of use, fines, penalties or liquidated sums that the Supplier

may be liable for under third party agreements, whether arising in contract, in equity, tort (including negligence) or by way of indemnity, under statute or otherwise at law and in each and every case whether arising directly or indirectly.

22. PRIVACY AND CONFIDENTIALITY

The Company must keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Company by EnerMech or its agents and any other confidential information concerning EnerMech's business or its equipment which the Company may obtain and the Company must restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Company's obligations to EnerMech and shall ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the Company. This clause does not apply where the confidential information:

- (a) was in the public domain prior to disclosure to the Company or has become part of the public domain through no fault or breach of the Company;
- (b) was in the Company's possession prior to EnerMech providing any Services to the Company and was not subject to obligations of confidentiality;
- (c) was given without restriction to the Company by a third party duly authorised or otherwise entitled to do so, and who did not receive the same in any way from EnerMech;
- (d) is required to be produced by order of a court or in any arbitration proceedings or under the requirements of any Law and/or by the rules of any relevant stock exchange; or
- (e) The Company had EnerMech's prior written consent for disclosure.

EnerMech will, in respect of any Personal Information obtained by it in respect of the Hire, comply with any Law which relates to the privacy of information about individuals and with which EnerMech must comply, including the Australian Privacy Principles under the *Privacy Act 1988* (Cth), any applicable code of practice and any applicable State or Territory privacy legislation.

The Supplier must ensure that for a period of 7 years following the later of the date on which all of the Materials have been supplied, or the end of the Period of Hire, its employees, subcontractors and employees of its subcontractors:

- (f) immediately inform EnerMech and the Company in writing of any personal injury or illness that occurs or is suffered in connection with the Hire and undergo a medical examination by a medical practitioner of the Company's choosing if and when required by the Company in connection with such injury or illness; and
- (g) immediately provide to EnerMech and the Company any medical records or reports the worker has obtained or which are otherwise requested by EnerMech or the Company relating to an injury or illness referred to in paragraph (a) together with written consents to the relevant medical practitioner providing the record or report.

If the Company provides EnerMech with a collection statement in any form which may be required by the Australian Privacy Principles under the *Privacy Act 1988* (Cth), any other Law or by EnerMech from time to time, the Company must ensure that such collection statement is provided to the relevant employee in connection with the collection of any personal (including sensitive) information as required. The Company will have no Entitlement against EnerMech arising out of, or in connection with, compliance with this clause.

23. FORCE MAJEURE

EnerMech reserves the right to defer the Delivery Date and/or the Hire Start Date and Time or payment or to cancel or amend the Hire or any part thereof if EnerMech determines that it is or is likely to be prevented from or delayed in the carrying on any part of its business due to circumstances beyond its reasonable control including but not limited to, natural disasters, forces of nature, earthquake, tidal wave, landslide, flood, lightning, hurricane, typhoon, storm or other weather condition not included in normal planning, epidemic, pandemic or plague, changes in laws or regulations, governmental actions, acts of civil or military authority, fire, explosion, lock-outs, strikes and/or labour disputes (whether or not relating to either party's workforce), civil commotion, protests, war, national emergency, riot, civil insurrection, acts of terrorism, restraints or delays in transportation, restraints or delays in manufacturing and inability of the Supplier to obtain adequate or suitable supplies from usual sources, or acts of EnerMech resulting in commercial impracticality (**Force Majeure Event**).

In the event of a Force Majeure Event, the Delivery Date and/or the Hire Start Date and Time shall be deferred for a period of time determined by EnerMech at EnerMech's sole discretion. Neither EnerMech nor the Company shall be entitled to, or liable to, the other for any damages, costs or expenses arising from or incurred as a result of a Force Majeure Event or any deferral to the Delivery Date and/or the Hire Start Date and Time pursuant to this clause.

24. ON-WAIVER

Any waiver or relaxation by EnerMech partly or wholly of any provision of, or right relating to, these Terms is valid only if in writing and signed by EnerMech. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to a particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision or right.