

TESMEC AUSTRALIA . GENERAL CONDITIONS OF SALE

1. GOVERNING PROVISIONS AND DEFINITIONS. These general conditions are applicable to any supply of trenching equipment, digging attachment and related devices sold by Tesmec Australia Pty Ltd. (the "Goods") and related services, if any (the "Services"), as better itemized in each purchase offer (the "Offer"). Each Offer shall be deemed open for acceptance for a period of 60 days, except a different period of validity is therein specified.

These general conditions and the special conditions contained in the Seller Offer or in Order Confirmation, as the case the last binding document may be, make the sale contract applicable between the Parties for the supply of Tesmec Goods and Services (the "Contract").

By issuing a purchase order, invoice or similar document to the Seller or signing or accepting a quotation issued by the Seller, the Buyer unconditionally accepts to be bound by the Contract in its entirety and without alteration. The Buyer unconditionally agrees that any terms and conditions attached to such purchase order, invoice or otherwise (including under any Buyer's system or its vendor set-up process) are null and void and the Buyer is entitled to ignore such term.

Submission by the Buyer of a purchase order for the Goods and/or Services is deemed to be an offer to purchase the Goods and/or Services subject to the Contract. The Seller may accept or reject such offer in its absolute discretion. A such offer to purchase Goods and/or Services is only deemed accepted by the Seller when it is acknowledged by Tesmec Australia in writing, and remains subject to the performance of the Contract.

These general conditions shall not be modified by any course of dealing or trade customs and usage. Any Buyer's standard or special terms and conditions shall not apply. Cancellation, modifications and waivers of the Contract or any of the underlying rights or obligations shall not be effective without Seller's written consent

2. PRICES AND PAYMENT CONDITIONS. Published prices are subject to change without notice.

The price and the payment conditions are indicated in the special conditions. The payment of the price shall be remitted by the Buyer to the Seller's business address. In case a down payment is agreed, the amount cashed shall be deemed as non refundable in case of Contract cancellation or termination.

Without limiting Seller's other rights under the Contract or at law, Buyer must pay to the Seller interest on any amount not paid from when payment falls due until payment in full is received, at a rate as determined by the ANZ Bank Reference Rate effective from time to time plus 2% per annum calculated on daily balances of amounts unpaid and capitalised daily.

The Seller may demand payment of interest by the Buyer at any time. Failure to demand interest does not constitute a waiver of the entitlement to interest.

Where the Price quoted for the Goods includes a separate quote for freight and shipping costs, those costs are an estimate only. If the actual cost of freight and shipping increases after the date of quotation but before Delivery, the Seller reserves the right, at its discretion, to charge the actual cost to the Buyer.

3. DELIVERY – TRADE TERM – RISK OF LOSS. Delivery dates are based on estimated manufacturing periods and shall not be deemed to represent fixed or guaranteed delivery dates, except expressly indicated in the special conditions. Seller's delivery obligation is subject to timely payment of the price from Buyer.

All risk of loss and damage shall pass accordingly. The Seller shall be no way responsible for loss or damaging of the Goods if they occur after the passage of risk. The loss or the damaging of the Goods occurred after the passing of risks don't relieve the Buyer from payment of the price.

4. RETENTION OF TITLE AND OWNERSHIP. In case of instalments payments, notwithstanding the delivery and the passing of risk in the Goods, the title of property shall not pass to the Buyer until the Seller has received payment in full of the Price of the Goods. Until the passing of title, the Buyer shall inform Tesmec promptly and about any action brought by third parties on the Goods, even if they only be threatened.

If the Buyer doesn't fulfil its payment obligations, the Seller shall request by a written note to return the Goods. The Buyer shall give back and/ or to procure the restitution of the supplied Goods without any kind of exception or counterclaim. All the costs and fees for the shipping back of the Goods to Seller's premises shall be at the Buyer's expenses.

This clause does not apply if mandatory custom laws of the Importer's Country provide differently.

4.1 Personal Property Securities Act 2009 (Cth) ("PPSA")

The retention of title in clause 4 gives rise to a Purchase Money Security Interest under the PPSA in favour of the Seller in respect of the Goods and their proceeds.

Buyer undertakes to:

- promptly do all things, execute all documents and/or provide any information which Seller may reasonably require to enable Seller to attach, enforce, register, protect and maintain the perfection of its first priority security interest; and
- give Seller not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and
- immediately on request by the Seller (and at Buyer's expense) obtain from any third party such agreements, waivers and releases (as the case may be) of any Purchase Money Security Interest that any third party has, or may have, in the Goods, to ensure that the retention of title with a first priority security interest in the Goods.
- Buyer waives its rights to receive a copy of any verification statements under section 157 of the PPSA.
- Buyer must give Seller notice if a third party with a security interest in the Goods seizes or otherwise deals with the Goods in a way that might impact Seller's Purchase Money Security Interest.

4.2 Finance

The Buyer may finance the purchase of the Goods through a separate agreement entered into between it and a finance company, approved by the Seller. If Buyer elects to finance the purchase of the Goods, Buyer may direct the Seller to transfer title to the Goods directly to the finance company and in the event of such a direction being provided, title will transfer directly to the finance company upon full payment of the Price. The Contract will apply as between the Seller and the Buyer that finances the purchase of the Goods even if the invoice records the finance company as the purchaser of the Goods.

5. PRE-DELIVERY INSPECTION. If special conditions include pre-delivery inspection ("PDI"), the Parties agree that it shall take place at the Supplier facility before delivery of the Goods and consists on a visual inspection. The PDI shall be conducted together by Supplier's and Buyer's personnel, technicians and/or appointed representatives. The Buyer shall attend the PDI before delivery of the Goods on the date communicated in writing by the Supplier to the Buyer with a suitable prior notice, on a minimum of five (5) days in advance.

The PDI shall result on a pre delivery inspection certificate, which shall be duly signed by both parties and shall bear evidence between them of the outcome of the inspection. The Parties' attendants shall make comments, reservations and other observations.

If the pre-delivery inspection do not reveal non-conformities of the Goods, the Supplier shall proceed with the packing and the delivery.

The Supplier shall perform the necessary works and take proper action at its own expense and under its responsibility to remedy possible non conformities.

If the Buyer refuses or is not willing to take part to the PDI after being noticed of the date, except for Force Majeure events, the pre-delivery inspection shall be deemed as successfully passed and the Supplier shall proceed with the delivery.

Notwithstanding the foregoing, the special conditions may contain different provisions about PDI need and/or methods of executions, depending on the specific Supply.

6. ASSEMBLY, START UP AND COMMISSIONING/TEST RUN. If the special conditions include Services and the assembly and/or start up and/or commissioning operations of the supplied Goods shall be done by Seller's technicians or third personnel charged by the Seller at the place of destination or at the job site, the Buyer shall bound its personnel and the one of the End User or of the Contractor, if different, to co-operate with the Seller's personnel and procure at its charge and without undue delay all the necessary tooling and special equipment for the prompt and successful execution of the above mentioned operations.

In a suitable time before the starting the operations, the Buyer shall provide to Tesmec After Sales and Service Dept:

- i) logistical information by sending back the relevant Tesmec data sheet, duly filled in;
- ii) applicable safety regulations and the risk assessment of the job site.

The Seller is not able to guarantee the timely performances of the operations if the previous information are lacking or not sent in due time.

The Buyer relieves the Seller from any kind of responsibility for delay in assembling, start up and commissioning/test run due to force majeure causes, to third parties or caused by the Buyer's faulty cooperation or delay in providing the necessary tooling and special equipment.

At the end of the commissioning/test run operations, the Seller and the Buyer personnel shall sign a certificate stating that the operations have been completed and that the Goods are accepted and ready for their intended use.

7. CLAIMS OF BUYER. Buyer shall inspect Goods immediately upon delivery. Goods shall not be subject to use until their commissioning/test run, unless expressly permitted by the Seller in writing. Any claim must be made by Buyer in writing within 8 days of receipt of delivery, and all ascertainable defects and nonconformities shall be stated with particularity or be deemed waived. Under no circumstances shall Goods be returned to Seller without Seller's written permission.

A claim that Goods are nonconforming shall not entitle Buyer to deduct any sum from any invoice unless such claim has been allowed in writing and accepted by the Buyer. Invoices shall be paid in full in accordance with the Contract. All claims by Buyer are subject to the claims procedures set forth in Seller's warranty conditions.

8. DELAY OF THE PARTIES IN CONTRACT'S EXECUTION. 8.1 In case of delay in delivery for which the Seller is responsible, and provided that the delivery date is expressly indicated as "binding", the Buyer may request, after having summoned in writing the Seller, liquidated damages at 0.5% for each complete week of delay (7 days), starting from such delivery date or at the end of the grace period, if any.

The liquidated damages shall be calculated on the net amount of the Goods delayed; Services, additional transport freight and special packing other the standard one, if any are excluded. The liquidated damages total amount can't exceed the 5% of the delayed Goods' net amount and shall be deemed as a satisfactory and full reimbursement of all the possible damaged suffered by the Buyer, excluding any further claims.

Any delay caused by force majeure or by acts or omission of the Buyer (e.g. the lack of indications which are necessary for the manufacturing or for the supply of the Goods) shall not be considered as a delay for which the Seller is responsible.

8.2 In case of unjustified refusal from the Buyer to collect the Goods (totally or partially) the Seller shall be entitled to claim the cost for the Goods' movements and storage.

9. **FORCE MAJEURE.** The Seller shall have the right to suspend performance of its contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond its control, such as strikes, boycotts, loc-outs, fires, war, civil wars, riots, revolutions, requisitions, embargo, restrictions imposed by any governmental legislation, rules or regulation, energy black-outs, delay in delivery of components or raw materials. Should the suspension due to force majeure last for more than six (6) months, Seller shall have the right to terminate the Contract by a fifteen (15) days' written notice Seller will be compensated for Goods or Services provided until that point, if any.

10. **CHARACTERISTICS OF THE GOODS - MODIFICATIONS.** Any information or data relating to the technical features and/or specifications of the Goods contained in catalogues, price lists, brochures and similar documents shall be binding only to the extent they are expressly referred to in the Contracts. Seller may make any changes to the Goods which, without altering their essential technical features, appear to be necessary or suitable.

11. **MADE TO ORDER GOODS.** For any Good made to the order of Buyer, or in case the Buyer charges the Seller to study, design and/or manufacture a particular kind of component and/or technical solution, Seller shall have no responsibility for errors or variations in tooling, patterns, specifications, drawings, or designs furnished to it by Buyer.

12. **WARRANTY AND COMPLAINTS.** In case of faulty or noncompliance of the Goods supplied, Buyer's exclusive remedy shall be limited to the repair or replacement of the faulty or nonconforming Good(s) in accordance with and limited by the Seller's International Warranty Conditions, here integrally recalled and attached as **Annex 1**. In no event shall Buyer be entitled to (nor Seller liable for) any consequential, incidental or contingent damages of any kind or loss of profit or loss of production, whether arising out of (a) third party claims against Buyer, or (b) breach of any applicable law with respect to Goods sold or Services rendered by Seller, or any undertakings, acts, or omissions relating thereto.

13. **LIMITED LIABILITY.** The Seller cannot be held liable for any kind of use or incident, bad functioning, breakdown, damage to property and person (either for injuries and death) caused, directly or indirectly: i) by any changes or alteration of the Goods made by the Buyer or by a third party, that have not been undergone to Tesmec Technical Dept. prior written approval and/or ii) by a particular usage of the Goods other than the application recommended by the Seller. Notwithstanding anything to the contrary in the Contract, the Seller (including its Related Bodies Corporate) is not liable to the Buyer, at law, equity, statute or otherwise for any Consequential Loss howsoever caused.

Notwithstanding anything to the contrary in the Contract or elsewhere and to the full extent permitted by law, the Seller's total cumulative liability to the Buyer for all liabilities, damages, losses, costs and expenses suffered or incurred under or in connection with the Contract by the Buyer for all Claims in the aggregate, is limited to the amount paid by the Buyer to the Seller for the Goods and Services the subject of the Claim.

14. **TRADEMARK AND INTELLECTUAL PROPERTY.** The Buyer cannot remove, cover or modify the trademark, labels, logos and signs found on the Goods upon delivery. Any Intellectual Property rights pertaining to the Goods and/or the Services shall remain a Seller exclusively right. Any form of reproduction, use and exploitation of the Seller's patents and know how is forbidden to the Buyer. In case of software embedded in the Goods, the Buyer is granted with a grant a perpetual, non transferable, license, without any additional cost to Buyer limited for the use and maintenance of the Goods, without any right to alter or revise such software.

15. **COMPLIANCE WITH ANTI -CORRUPTION AND ETHICAL STANDARDS .**

The Buyer acknowledges that the Seller is part of Tesmec Group. The Mother company Tesmec S.p.A. is a public company listed on the Italian stock exchange and, together with its group companies, is subject to Legislative Decree No. 231/2001 ("Italian 231 Law"), which provides for corporate liability in connection with certain criminal offences committed by directors, employees or third parties in the interest or to the advantage of the company.

Such offences include, without limitation, fraud, embezzlement, bribery and corruption, corporate misconduct, market abuse, and offences relating to workplace health and safety.

Tesmec has adopted a Code of Ethics and an Organisational, Management and Control Model designed to prevent such offences (the "Compliance Documents"), which are available on its website.

By entering into this Contract, the Buyer:

- (a) represents and warrants that it is aware of and will comply with principles equivalent to those set out in the Compliance Documents;
- (b) undertakes to conduct its business in accordance with all applicable laws, including without limitation anti-bribery, anti-corruption and workplace safety laws; and
- (c) agrees not to engage in any conduct which would cause Tesmec or any of its affiliates to be in breach of the Italian 231 Law or any applicable laws.

The Buyer must promptly notify the Seller of any actual or suspected breach of this clause.

If the Buyer breaches this clause, or if the Seller reasonably believes that such a breach has occurred or is likely to occur, the Seller may, without prejudice to any other rights:

- (i) immediately suspend performance of the Contract; and/or
- (ii) terminate the Contract by written notice to the Buyer with immediate effect.

For the purposes of this clause, any breach shall be deemed a material breach of this Contract.

16. **MISCELLANEOUS PROVISIONS.** Entire Agreement and Severability. Each Contract for the sale of Goods and Services shall be deemed concluded upon Tesmec either receiving the Order Confirmation duly signed by the Buyer confirming in writing its order or starting the performance of such order by the Buyer.

These General Conditions shall be deemed accepted by the Buyer also in case the Contract is executed by Tesmec starting to perform the order of the Buyer. The invalidity of any one of the contractual provisions shall not affect the validity of the remaining provisions.

Advertising. Buyer allows the Seller to put its name, logos and possible pictures taken of the Goods in the job site in Tesmec reference list and advertising materials, including web site, on the assurance that Tesmec will use them for marketing purposes only.

Limitations on suits and actions. No action or suit to enforce Buyer's rights or remedies arising from each Contract or these Standard Terms and Conditions shall be commenced later than one year from the date of any actual breach by Seller.

17. **CUSTOMS REGULATIONS.** It is the policy of Seller to fully comply with any and all regulations in force at the moment of shipment, including the Export Administration Regulations, relating to the transportation, sell, delivery or shipment of goods. Seller is not responsible for the delay or failure of delivery of any good subject to this sale which is not permitted to be exported. Further, Buyer represents, warrants and agrees that Buyer has provided to Seller all information regarding the end-user and final destination of the Good subject to each sale. Buyer understands and acknowledges that Seller will rely on the information provided by Buyer in making a determination whether to make application with the competent Authorities for an export license or approval and in making any application.

Diversion, exportation or re-exportation contrary to applicable law is prohibited. Seller has the absolute right -- without any liability to Buyer -- to cancel any sale which Seller believes to be in violation of any export regulation.

18. **APPLICABLE LAW.** For what not expressly written down in these general conditions, the Contract is governed by the laws of New South Wales. The uniform law provisions of the UN Vienna Convention of 11 April 1980 related to the international sales of Goods shall not apply..

19. **DISPUTE RESOLUTION.** The Parties undertake to execute the Contract according to the principle of good faith and to use their best efforts to find an amicable solution to all and any disputes that might arise for the interpretation, execution, validity and enforcement of its provisions. If they are not able to reach a friendly settlement, the competent Court of the place where the Seller has its registered office shall have exclusive jurisdiction. However, as an exception to the principle hereabove, the Seller is in any case entitled to choose, as an alternative, to bring its action before the competent Court where the Buyer has its registered office.

20. **REMOTE MONITORING SYSTEM AND DATA PROCESSING.**

20.1 The Seller informs the Buyer that the Machine is equipped with onboard remote monitoring systems, including but not limited to geolocation devices and systems for collecting and transmitting operating data (the "System"). The System allows: (a) monitoring of the machine performance and operating parameters; (b) diagnostic and preventive maintenance activities; (c) fleet management; (d) technical support services, including remote troubleshooting.

20.2 The Buyer acknowledges and agrees that the operation of the System implies the collection, processing and use of technical and operational data relating to the Machine. Such data may include, but is not limited to: (a) machine location; (b) operational parameters; (c) usage data and performance information.

20.3 The Buyer explicitly consents that the Seller may collect, use and disclose such data for the purposes indicated above, in accordance with the Privacy Act 1988 (Cth) and the Australian Privacy Principles (APPs).

20.4 The Buyer further acknowledges and agrees that such data may be shared by the Seller with third parties involved in the provision of services related to the Machine, including but not limited to OEM partners, component suppliers and technology providers (including Caterpillar Inc. where applicable), for purposes of: (a) diagnostics and maintenance; (b) product improvement; (c) service optimisation.

20.5 Where data is transferred to recipients located outside Australia, the Seller undertakes to take reasonable steps to ensure that such recipients comply with the Australian Privacy Principles or are subject to a law or binding scheme that is substantially similar to the Privacy Act 1988 (Cth), in accordance with APP 8.

20.6 The Seller undertakes to handle the data in compliance with applicable data protection regulations, including the Privacy Act 1988 (Cth), and in accordance with its Data Privacy and Data

Governance policies available on the Seller's website.

20.7 The Buyer declares to have been informed and to accept the data collection, use and disclosure as described above. Where the Buyer is not the end-user of the Machine, the Buyer undertakes, to the extent required by applicable laws, to inform and where necessary obtain consent from the end-user.

20.8 In case the Buyer does not accept the data sharing provisions, the System functionalities may be limited or disabled, without affecting the validity of the Contract.