

## STANDARD TERMS AND CONDITIONS

### 1) Interpretation

- a) In these conditions, unless the contrary intention appears:
  - i) Contract means any contract or agreement whatsoever made by SREPS to supply any goods or services to the customer, whether resulting from the acceptance by SREPS of an order given by the customer or otherwise; contract price means the total of the prices specified for the Supply by SREPS to the customer; SREPS means SREPS Capital Equipment Pty Ltd ; customer means the customer of SREPS who buys goods or to whom SREPS supplies any services; goods means any or all of the products the subject of Supply by SREPS to a customer; GST means a tax payable on a Supply, excluding stamp duty and any other taxes that are in existence as at 1 March 1999; "Intellectual Property Rights" means rights subsisting or capable of subsisting or being obtained under intellectual property legislation, including legislation dealing with copyright, circuit layouts, designs, patents, plant varieties or trademarks, and whether in Australia or overseas; order means any offer to purchase the goods from SREPS made by a customer; price means, in relation to any goods, the price of those goods; services means any or all of the services (if any) the subject of Supply by SREPS to a customer; Supply means the supply of any goods, services or other things the subject of any contract; and Tax means sales tax, GST, value added tax, retail tax or any other tax or duty that may be imposed on or in relation to any Supply.
- b) The Contract comprises the Quote, the Terms of Payment and Commissioning and the Terms and Conditions. In the event of any inconsistency or conflict between those documents the order of reading and priority shall be, Quote, Terms of Payment and Standard Terms and Conditions.

### 2) Conditions

- a) These conditions:
  - i) will form part of any contract;
  - ii) will apply to any Supply by SREPS, whether in accordance with any order, contract, or otherwise; and
  - iii) may be varied only by writing signed by an authorised officer of SREPS and the customer.

### 3) Terms of Payment

- a) The time for payment and the price is set out in the Terms of Payment and Commissioning
- b) Time for payment of the price for any Supply is of the essence in any contract.

### 4) Exchange Rate

- a) Refer to Terms of Payment and Commissioning.

### 5) Delivery and Costs

- a) SREPS may, but is not obliged to, deliver the goods to the customer's premises, in accordance with SREPS's usual practices, but if:
  - i) the customer requests another method of delivery; or
  - ii) SREPS elects to use an independent courier to deliver the goods,
  - iii) SREPS may arrange another form of transport with that independent courier by a separate contract, and the customer must pay to SREPS on demand any cost of that courier incurred by SREPS.

### 6) Title and Property

- a) The title to and property in the goods will not pass from SREPS to the customer until the customer has paid the contract price in full (other than the costs of any independent courier referred to in clause 4) to SREPS in accordance with these conditions. Until then, the customer must possess the goods as a trustee, and must not resell or transfer possession of the goods.
  - i) If the customer:
    - (1) fails to pay the contract price in full when due;
    - (2) pays for the goods by cheque (in whole or in part) and that cheque is not met on presentation;
    - (3) commits any act of bankruptcy, becomes bankrupt, or is insolvent under administration, as defined in section 9 of the Corporations Law;

- (4) is or becomes insolvent within that meaning as given by any of section 9, subsection 95A (2) or section 922 of the Corporations Law; or
- (5) has a controller appointed, as defined in section 9 of the Corporations Law, in respect of any of the customer's property;
- ii) SREPS may
- iii) enter onto the premises where the goods are situated; and
- iv) repossess the goods, notwithstanding that the goods may have been affixed to any structure by SREPS or the customer, and if necessary for that purpose, may sever the goods from any structure to which they may have been affixed.
- v) The customer must also indemnify and keep SREPS indemnified against, and pay to SREPS, all expenses, losses and damages incurred or sustained by SREPS as a result of, or relation, to SREPS exercising its rights under:
  - (1) this clause;
  - (2) under any other term, express or implied, of these conditions; or
  - (3) otherwise at law or in equity,
  - (4) and any bank or other costs, charges or expenses incurred by SREPS resulting from any customer's cheque not being met on presentation.

## 7) Returns Policy

- a) Subject to the requirements of any law and this Contract SREPS:
  - i) may consider, but is not obliged to allow, goods to be returned for credit, if:
  - ii) the goods are returned in good and resaleable condition, in the original packaging:
  - iii) the customer first pays all freight and other charges to deliver the goods to SREPS premises and SREPS will not accept any goods sent, or pay for, "freight forward", and
  - iv) the customer first supplied to SREPS the original invoice number and date of supply
  - v) may, in its sole discretion, allow the following credits for goods returned:
  - vi) for goods returned within 30 days of invoice - full credit;
  - vii) for goods returned between 30 and 60 days of invoice - invoice value less 15%; and
  - viii) for goods returned after 60 days - no credit (unless SREPS agrees otherwise, in its sole discretion)
  - ix) will not allow credits for:

## 8) any goods:

- a) specifically cut to length;
- b) specifically made, treated or purchased for the customer;
- c) damaged or altered in any way by the customer; or
- d) being electrical or non-stock lines; or
- e) ii) any freight and delivery fees

## 9) If SREPS accepts any goods returned for credit:

- a) SREPS may issue a credit note after it has inspected the goods and found them satisfactory, in its sole discretion; and
- b) If SREPS decides not to issue a credit note, SREPS will:
  - i) so inform the customer; and
  - ii) make the goods made available at SREPS's premises for the customer to collect.

## 10) Consequential Loss

- a) Subject to this Contract the customer's sole remedy for any defective goods or services will be the repair or replacement of the defective goods or for the re-supply of the defective services
- b) SREPS's liability for any breach of any warranty or of any term, express or implied, of any contract in relation to any supply, will not extend in any circumstances to loss of profits, or other economic loss, or to loss arising from negligence or any other tort, in any case, whether direct, indirect, special, consequential or otherwise

## 11) Insurance

- a) Notwithstanding clauses 4 and 5, the goods will be at the customer's risk after they leave SREPS premises. If the customer requests it in writing, SREPS may, at the customer's expense, insure the goods.

## 12) Taxes

- a) Unless otherwise expressly agreed by, or shown on an invoice issued by, SREPS, the prices specified do not include Taxes. The customer must bear and pay all such taxes, duties and applicable government charges other than any customs or import duties or similar duties or taxes payable on the importing of goods and services into Australia.
- b) SREPS may recover from the customer the amount of any GST in relation to any Supply in addition to, and at the same time and in the same manner as, any amount that the customer is obliged to pay for that Supply.

### 13) Insolvency

- a) If the Customer commits or is involved in any act of insolvency, it agrees it shall be deemed in default under these terms
- b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.

### 14) Recovery Costs'

- a) The Customer will pay all the costs & expenses (on a full indemnity basis) incurred by SREPS or its solicitors, legal advisers, mercantile agents & other parties acting on SREPS behalf in respect of anything instituted or being considered against the Customer whether for debt, loss, damages, possession of any Products or otherwise.

### 15) Force Majeure

- a) SREPS will not be in default or in breach of any contract with the Customer as a result of Force Majeure. Force Majeure means anything or event beyond the reasonable control of SREPS and includes any strike or lock-out.

### 16) Customer Restructure

- a) The Customer will notify SREPS in writing within 7 days of any change in its structure or management including any change in director, shareholder or change in partnership or trusteeship and/or of the sale of any part of its business.

### 17) Variation

- a) The Client may request SREPS perform a variation, with the request being in written form
  - i) SREPS will provide the Client with details of the effect that SREPS anticipates a proposed Variation will have on the Completion Date and the Price.
  - ii) Following receipt of the details, the Parties must seek to agree on the price for the Variation and the impact of the Variation on the completion date;
  - iii) SREPS is not obliged to proceed with a Variation after receiving the details from the Client.

### 18) Default

- a) Upon any default or breach by the Customer of these Terms or any other dealing or arrangement with SREPS, SREPS may at its discretion (inter alia)
- b) retain all monies paid, call-up any monies unpaid, cease further deliveries, recover from the Customer all loss of profits arising & take immediate possession of any Product held by the Customer, without prejudice to any other rights & without being liable to any party
- c) The customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against SREPS whilst the customer is in default under any part of these Terms or in any of its dealings with SREPS.
- d) After an order has been accepted; no cancellation by the buyer shall be binding on SREPS without their prior written consent and subject to such conditions as will indemnify SREPS against loss for commitments made and in process, loss of profits and completed customized work.
- e) If acceptance is granted by SREPS, of a cancellation, regardless of the progress of the contract SREPS reserves the right to charge a cancellation fee of 25% in addition to the afore mentioned clauses of the total price of the contract (excluding GST) on any order canceled after acceptance by both parties.

### 19) Limitation of Liability

- a) Except as otherwise expressly provided in this Contract and subject to the succeeding paragraphs, SREPS excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law (including Act of Parliament) or otherwise), relating to the order, the goods or services (whether as to their quality, fitness for any purpose, correspondence with any description or sample or otherwise), or their delivery, being provisions that might otherwise form part of these conditions, or any contract, or be collateral to or form part of any agreement that is collateral to these conditions, or any contract.
- b) Subject to the next paragraph, SREPS will not be liable to compensate or indemnify the customer for any loss or damage suffered or incurred by the customer in relation to the order, the goods, or the services, or their delivery, mis-delivery or non-delivery (including but not limited to any loss of profits or other economic loss or to loss arising from negligence or any other tort, in any case, whether direct, indirect, consequential or otherwise)

- c) These conditions do not, and no provision of these conditions purports to, exclude, restrict or modify or have the effect of excluding, restricting or modifying;
- d) the application in relation to the supply of the goods or services of any provision of the Trade Practices Act 1974 or of any similar State or Federal legislation that may not be excluded, restricted or modified;
- e) the exercise of a right conferred by such provision; or
- f) subject to the next paragraph, any liability of SREPS for breach of a condition or warranty implied by such a provision. SREPS's liability for a breach of a condition or warranty implied by a provision of Division 2 of Part V of the Trade Practices Act 1974, or of any similar State or Federal legislation where SREPS may similarly limit its liability, will be limited to any one of the following:
  - g) in the case of goods:
  - h) the replacement of the relevant goods or the supply of equivalent goods;
  - i) the repair of the relevant goods;
  - j) the payment of the cost of replacing the relevant goods, or of acquiring equivalent goods; or
  - k) the payment of the cost of having the relevant goods repaired; and
  - l) in the case of services:
  - m) the supply of the services again; or
  - n) the payment of the cost of having the relevant services supplied again, and SREPS may in its sole discretion determine which of the foregoing limits will apply in any case.

## 20) Governing Law

- a) Any Supply by SREPS to the customer, and these conditions, is governed by and is to be interpreted in accordance with the laws of Western Australia and the Parties submit to the non-exclusive jurisdiction of the courts of that State.

## 21) SREPS Limited Warranty

- a) SREPS warrants that this machine or equipment: is free of defects in material and workmanship at the time of shipment from its factory;
  - i) This warranty is subject to the following limitations.
  - ii) This limited warranty applies only to machines and equipment which have been subjected to normal use and service. Consumables are a separate product and warranted by their manufacturer.
  - iii) SREPS also warrants that it will use its best endeavours to ensure that the customer receives the full benefit of any warranty provided by a manufacturer of any component of the equipment and will, and if necessary, assign to the customer all benefits that it holds in such manufacturer's warranties.
  - iv) This limited warranty is for a period of 12 months from initial operation or 2000 hours, whichever occurs first: not to exceed 12 months from the date of shipment.
  - v) Spare Parts - 3 months from shipment or 1000 hours, whichever occurs first
  - vi) Subject to other provisions in this Contract, SREPS's obligation under this limited warranty shall be solely to replace or repair without charge at the dealer's location (subject to the second paragraph of this clause 13.4) those component parts which SREPS itself manufactured. Any component part installed to replace a defective component part is warranted solely for the duration of the unexpired warranty on the machine or equipment in which such component part is installed. The machine or equipment may incorporate many component parts manufactured by companies other than SREPS, such as truck chassis, carriers, tracks, engines, tyres, hydraulic pumps, hydraulic motors and other component parts too numerous to list. This limited warranty does not apply to such component parts, but such component parts may be warranted by the companies that manufactured them.
  - vii) If the equipment is on a drilling site and under contract to a client of the customer, then SREPS will unless the customer agrees otherwise, effect the replacement or repair work on site as expeditiously as possible. The cost of any travel shall be to the account of the Customer.
  - viii) This limited warranty does not apply to regular maintenance replacement items, including but not limited to V-belts, electrical bulbs, wiper blades, filters, lubricants and batteries. This limited warranty does not apply to normal maintenance serviced and adjustments including but not limited to fuel, air and hydraulic system cleaning, engine tune up, clutch inspection and adjustment.
  - ix) Unless notified in writing by SREPS all replaced parts must be returned to SREPS transportation charges prepaid.
  - x) It shall be the obligation of the user/customer to pay for transportation of this machine or equipment to the dealer providing warranty service and pay for travel time or mileage if warranty service is provided at the job site.
  - xi) In order for this limited warranty to apply, this machine or equipment must be made available for repair during the warranty period.
  - xii) SREPS shall not be liable for defects, damage or failures caused by unauthorised alterations, use of non-approved parts, unreasonable use, neglect, abuse, accident or negligent repair, including a failure to provide reasonable and necessary maintenance after the new machine is in service
  - xiii) SREPS reserves the right to make design changes or any product improvement at any time, without incurring any obligation to install same on units previously manufactured but will use its best endeavors to advise the customer of any design changes or product improvement that it would be reasonable to assume would be of a benefit to the customer.
  - xiv) SREPS's liability for breach of this limited warranty, whether a claim or lawsuit is brought in contract, tort or strict liability, shall be limited exclusively to repair or replacement of defective parts manufactured by SREPS. SREPS shall not be liable for any direct or indirect

incidental or consequential damage of any kind which may result from defects in its products or from breach of this limited warranty nor shall SREPS be liable for damage resulting from a user/customer's loss of use of this SREPS machine or equipment

## 22) Intellectual Property Rights

- a) The customer acknowledges that SREPS is solely entitled to all Intellectual Property Rights that may arise or be capable of being claimed as a result of anything done performed manufactured supplied or provided by SREPS in the course of incidental to or in connection with any Contract between SREPS and the customer.
- b) The customer must, both during the term of the Contract between SREPS and the customer and after the termination or completion of any Contract, comply on demand with any request SREPS may make to protect transfer confirm or secure ownership of any Intellectual Property Rights in SREPS including (without limitation) for the customer to perform any acts matters or things and sign any documents which may be required to achieve that purpose. The parties agree that this clause shall survive the termination of the Contract.