

## 1. Definitions

In these Terms and Conditions:

- **Agreement** means the Contract Specifics, these Terms and Conditions and the Special Conditions (if any).
- **Contract Specifics** means the information contained on the page to which these Terms and Conditions are attached.
- **Fee** means the fee for the Services as specified in the Contract Specifics.
- **Item** means any one or more items to be tested as specified in the Contract Specifics.
- **Law** means:
  - any statute, regulation, ordinance or subordinate legislation;
  - any standards issued by Standards Australia; and
  - any other regulatory instruments applying to the Services, and includes the common law applicable from time to time in the State or Territory in which the Services are being provided.
- **Loss** means any losses, damages, costs, charges and expenses, including indirect and consequential loss.
- **Services** means the safety testing services to be supplied by ENERVEN as described in the Contract Specifics (including any Special Conditions, if applicable), and any other Services agreed in writing between the parties from time to time.
- **Special Conditions** means the additional terms and conditions (if any) referred to as such in the Contract Specifics.
- **Test Completion Date means** the date specified as such in the Contract Specifics.
- 1.10 **Testing Site** means the site where the Services will occur, as specified in the Contract Specifics.

## 2. Terms Applying

- The Customer has engaged ENERVEN to provide the Services in accordance with the Agreement.
- The Customer agrees to be bound by the Agreement.
- This Agreement is the entire agreement between the parties relating to the Services. Any terms or conditions of supply on any invoice (including purchase order) provided by the Customer will be of no effect and will not replace or vary the Agreement (unless ENERVEN agrees in writing).
- Unless the Contract Specifics expressly state otherwise, ENERVEN makes no representation or warranty in relation to the Services.

## 3. Services

- While ENERVEN will endeavour to complete the Services by the Test Completion Date, ENERVEN accepts no liability in the event that it fails to complete the Services by the Test Completion Date.
- ENERVEN may agree to perform the Services at the Customer's premises.
- Upon completion of the Services, ENERVEN will provide a test report to the Customer (and any other test report agreed between the parties in writing).

## 4. Customer's Obligations

- The Customer is solely responsible for testing any Item as frequently as required to ensure that the relevant Item remains compliant with any Law.
- The Customer must ensure that any Item is available at the Testing Site by the Date for Delivery nominated in the Contract Specifics.
- If ENERVEN agrees to provide the Services at the Customer's site, the Customer must have and maintain a safe system of work and all certificates, licences and approvals required by Law, including all Laws regarding the health and safety of workers and work sites.
- Easy access to any Item to be tested at the Customer's site is required and parking for ENERVEN vehicle(s) will be provided by the Customer (or a surcharge may be payable by the Customer).
- Each Item supplied by the Customer will be free from any defect (including any latent defect) in design, materials and workmanship, and not emit any contaminant or hazardous substance.

## 5. Title and Risk

- The Customer provides any Item for testing by ENERVEN at its own risk.
- The Customer is responsible for all transport and unloading costs and must insure each Item to its full insurable value with a reputable insurer.
- If ENERVEN takes possession of any Item belonging to the Customer, ENERVEN does not acquire any right, title or interest in any Item.

## 6. Fee and GST

- 6.1 The Customer must pay the Fee (and applicable GST) within 30 days of completion of the Services. Payment is strictly via Purchase Order or Credit Card only. No cash payment accepted.

## 7. Assignment & Subcontracting

- ENERVEN may assign its rights and obligations under the Agreement at any time.
- The Customer must not assign or subcontract its rights or obligations under the Agreement without ENERVEN's prior written consent.
- **Intellectual Property Rights**
- All intellectual property rights in anything created by ENERVEN in the course of providing the Services vest in ENERVEN upon their creation.
- All intellectual property rights in any Item remain vested in the Customer.
- The Customer will not use ENERVEN's name or any materials associated with the Agreement for advertising or promotional purposes without ENERVEN's prior written consent.
- **Indemnity and Insurance**
- The Customer will indemnify and keep indemnified ENERVEN (and its employees, agents and contractors) from and against any Losses arising in connection with:
  - loss of or damage to property;
  - death or injury to any person;
  - any actual or alleged infringement of any intellectual property rights; or
  - any breach of the Agreement or Law,

in respect of ENERVEN's performance (or non-performance) of the Services (with the Customer's liability reduced proportionately to the extent that ENERVEN contributes to any such Loss).

- The indemnities in this clause continue to apply regardless of the expiry of the Agreement.
- The Customer must effect and maintain a policy of public liability and product liability insurance in which the limit is not less than \$[10] million for any one claim.
- Upon request, the Customer shall provide ENERVEN with a true and correct copy of the certificates of insurance maintained in compliance with the Agreement as evidence that any such policy is in full force and effect.
- The Customer acknowledges that the taking out of insurance shall not in any way limit or exclude its obligations to indemnify ENERVEN under the Agreement.
- **Limitation of Liability**
- Except to the extent required by Law, ENERVEN has no liability whatsoever (including, but without limitation, in equity, contract or tort, including negligence) to the Customer or any other person for any loss of profits, income or savings, or for indirect, special or consequential damage, loss, cost or expense suffered by the Customer or any other person.
- Where ENERVEN is found to be liable to the Customer as a result of the operation of Law or for breach of the Agreement then its liability shall be limited to the Fee payable in respect of the Service relating to that claim for liability.
- **Variation**  
Any variations to the Agreement must be in writing and signed by duly authorised representatives of each party.
- **Termination**  
Without limiting ENERVEN's other rights, ENERVEN may terminate the Agreement at any time with immediate effect by notice (in writing) to the Customer.
- **Notices**  
A notice under the Agreement must be in writing, in English and signed on behalf of the party giving notice, and must be served either by personal delivery, facsimile or pre paid ordinary post to the relevant party's address or facsimile number appearing in the Contract Specifics.
- **Dispute**  
If any dispute arises between the parties which is in any way connected to the Agreement, a senior manager of ENERVEN and the Customer must meet to attempt to resolve the dispute before proceeding to litigation.
- **Power to Act**  
Each party represents and warrants that the person named as the respective party's authorised representative in the Contract Specifics has authority to exercise all rights and powers of the relevant party and to bind the party for whom they are the nominated authorised representative.

- **Governing Law and Jurisdiction**  
The laws applicable in South Australia, and the courts of South Australia, apply to and have jurisdiction in relation to the Agreement.
- **Aircraft & Aviation** ENERVEN will not knowingly provide testing, repair or calibration services on equipment that is used for purposes directly associated with aircraft or aviation equipment.
- **Minimum Charge** ENERVEN reserves the right to apply a minimum repair service charge of \$70 for all equipment inspections, quotations and repairs.
- **Couriers** ENERVEN must be advised in writing if a preferred courier is to be used for return of items. If no preferred courier is nominated, the return courier will be engaged at our discretion. Customer is responsible for the cost of the courier.