

TERMS & CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 For the purpose of this Agreement, the following terms have the meanings set forth below:

- a) **Agreement:** This document, including the Agreement Particulars, General Terms, Schedules, and Annexures.
- b) **Agreement Particulars:** The section above these General Terms that details specific information about this agreement.
- c) **Basic Rate:** The per hour rate to be charged for the Services, as specified in the Agreement Particulars.
- d) **Business Day:** A Day on which registered banks are open for general banking business, other than a Saturday, Sunday, or statutory holiday, in the place where an obligation is to be performed.
- e) **GST:** The goods and services tax imposed under the Goods and Services Tax Act 1985.
- f) **Machine:** Refers the machine details and conditions described in the Agreement Particulars.
- g) **Services:** The service operations described in the Agreement Particulars and Schedule 1.
- h) **Start Date:** The start date set out in the Agreement Particulars
- i) **Term:** The contract duration set out in the Agreement Particulars, in months and hours.

1.2 In the construction and interpretation of this Agreement:

- a) references to clauses are references to clauses of these General Terms.
- b) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted, or replaced from time to time and any orders, regulations, instruments, or other subordinated legislation made under them.
- c) words importing the singular number include the plural and vice versa, references to any gender include every gender and references to persons include corporations and unincorporated bodies of persons, government or semi-government bodies or agencies or political subdivisions of them.
- d) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- e) references to "dollars" and "\$" are references to New Zealand dollars; and
- f) references to "written" and "in writing" include any means of permanent visible representation.

2 SUPPLY OF SERVICES

2.1 In supplying the Services, TDX shall:

- a. Perform the Services in accordance with Schedule 1.
- b. TDX will (and to the extent TDX as a company, ensure that its employee(s) will) perform the Services under this Agreement in an efficient, proper, and professional manner. In accordance with all Applicable Law and to the extent the Services are performed on the Customer's premises, will follow all health and safety policies and other reasonable instructions issued by the CUSTOMER and its authorised representatives from time to time.
- c. TDX will prepare and furnish to the CUSTOMER plans, procedures and documentation reasonably requested by the CUSTOMER in relation to management of health and safety.
- d. Any representations, whether oral or in writing, that TDX has made to the CUSTOMER as to the TDX's qualifications, experience, capacity to provide the Services and any other relevant matter before entering this Agreement are true and complete.
- e. TDX will supply all materials, equipment, and machinery (as applicable) necessary for the provision of the Services, and will ensure that all such materials, equipment and machinery are fit for their intended purpose and comply with Applicable Law.
- f. TDX and each of its employee(s) (as applicable) will not use any of the Customer's equipment unless the CUSTOMER specifically approves such use (which will be solely at the Customer's discretion).
- g. TDX will maintain all licences, consents, and permits required by Applicable Law for the performance of the Services and immediately notify the CUSTOMER if such licences, consents, or permits are cancelled or modified to any material extent; and
- h. TDX, at TDX's own cost, shall make good any errors, defects or omissions in the Services provided to the Customer.
- i. TDX shall notify the Owner of any additional work which is chargeable.
- j. Observe all reasonable health and safety and security requirements that apply at any location where the Services are carried out and have been communicated to TDX (provided that TDX will not be liable under this Agreement if, because of such observance, TDX is in breach of any of its obligations under this Agreement).

2.2 The Work:

- a. The CUSTOMER has sought and TDX has agreed to provide or procure the provision of scheduled maintenance and/or repair/s (the "Work"), for the machine identified in the Agreement hereto (the "Machine") under the following terms and conditions.
- b. For the purpose of this Agreement "TDX" shall mean the representative providing the Work under the Agreement. 1) The Work for the Machine shall be provided by TDX or an authorised service Dealer. 2) The Work shall be the scheduled maintenance and/or repairs due to normal use of the Machine as set out in the Agreement.

2.3 Other Terms:

- a. All work carried out by TDX, or its authorised service centres, and not included in the Work as described in the machine workbook supplied with this agreement, shall be at additional cost for the CUSTOMER, if so, requested by TDX.
- b. This Agreement is not transferable to another Customer. However, the machine can be transferred to another location with the Agreement of TDX, if TDX is notified, in writing, one month prior to transfer.
- c. Any taxes, levies, GST, or duties applicable in relation hereto are not included in the fees payable hereunder and will be charged separately to the CUSTOMER in addition to the fee.
- d. TDX shall not be responsible for any loss or misplacement of any payments sent through post or any other means.
- e. Upon early termination of this Agreement a tally up of all costs will be made and any outstanding costs associated to work already undertaken or an extended warranty purchased, will be invoiced to the CUSTOMER in full.
- f. The termination of the provision of Work, shall not affect or prejudice any right accrued to any of the parties against the other, prior to the termination.
- g. Where two or more persons are named as CUSTOMER in the Agreement their liability under this Agreement shall be joint and several.
- h. Subject to the provisions hereof, this Agreement is not intended and shall not be construed to confer on any person other than the parties hereof any rights and/or remedies herein.

2.4 Except as expressly set out in this Agreement, TDX does not make any representation or warranty as to the quality, fitness for purpose or otherwise in relation to the Services. To the extent permitted by law, all warranties and conditions imposed by law are hereby excluded.

2.5 The parties acknowledge that they are each in trade and that the Services are supplied and acquired in trade and, accordingly, the parties agree that the Consumer Guarantees Act 1993 does not apply and that, having regard to the fact that each party has had the opportunity to seek legal advice in relation to this Agreement, the exclusion of that Act is fair and reasonable.

3 CUSTOMER'S OBLIGATIONS

3.1 The CUSTOMER shall:

- a. co-operate with TDX in all matters relating to the Services.
- b. make the Machine available to TDX to carry out the Services in a clean condition at the location, and at the time and on the date, agreed with TDX; and
- c. provide TDX with access to such premises, facilities, and equipment as TDX reasonably requires for the purpose of carrying out the Services.
- d. keep and use the Machine in a proper and prudent manner and ensure that only competent workers operate the Machine.
- e. not overload the Machine or use the Machine for any purpose for which it is not designed.

- f. ensure that any mechanical components of the Machine which are covered by the Services (including, for example, turbos, water pumps, differentials, engines, and transmissions) are not repaired, removed, or exchanged, except under this Agreement or with TDX's prior written approval; and
- g. regularly check the Machine's oil, coolant and electrolyte levels and ensure that those levels are correctly maintained at the manufacturer's recommended levels, and perform such other daily checks as are recommended in the manufacturer's operating manual.
- h. Within a reasonable period, the Customer notify TDX if they encounter any of the following issues with the equipment's hour meter:
- i. Complete Failure: The hour meter ceases to function entirely
 - i. Operational Impairment: The hour meter malfunctions or displays inaccurate readings.
 - ii. Discrepancies with Digital Reading/Caretrack System: The hour meter reading significantly deviates from the digital reading or Caretrack system.
 - iii. Unexpected Operating Hours: The hour meter reading shows a significant deviation (more than 10%) from the expected operating hours outlined in the agreement.
- j. Upon TDX's request, allow TDX to inspect and check the hour meter reading, operation, and seals (both during and after the end of the Term)
- k. The customer shall ensure the machine is available for servicing and inspection on a date and time mutually agreed upon by both parties. Prior to service, the machine should be cleaned to a reasonable standard to facilitate a thorough inspection and efficient service.
- l. Missed services due to late availability may impact warranty cover or lead to potential machine malfunctions. TDX will not be responsible for any of those breakdowns or delays in service schedule caused by customer's late availability.
- m. TDX will work with the customer to reschedule and carry out a comprehensive service in the next visit if a complete service is missed or partially done due to the customer's inability to release the machine on the agreed-upon date and time.
- n. Where the Machine is not fitted with telematics, advise TDX, upon TDX's request and, in any event, at the end of each calendar month during the Term and at the end of the Term, of the actual number of hours which the Machine has been operated up to the time of the reading. Failure to report the hours monthly will give TDX the right to switch the payment method to a monthly flat rate.
- o. Upon the expiration or termination of this Agreement, the CUSTOMER will make the machine available to TDX (or a TDX appointed agent) in order for TDX to ascertain the hours operated by the machine for the purposes of determining whether any excess charge is payable under this Agreement. The CUSTOMER shall make the Machine available within ten (10) working days after expiration.
- p. The CUSTOMER shall pay TDX a fee, as specified in the Agreement, payable by the CUSTOMER as invoiced, for the performance of the Work hereunder. TDX will be liable for all costs associated with the performance of the Work.

- q. If a change occurs in any of the conditions set out in the Agreement, the CUSTOMER shall inform TDX in writing of this at once. In case of a change, both parties shall review and agree in writing on new pricing jointly.

3.2 If required by TDX, the CUSTOMER shall procure a guarantee of its obligations under this Agreement in the form required, and from a guarantor approved, by TDX.

4 CHARGES AND PAYMENT

4.1 In consideration for the supply of the Services, at or following the end of each calendar month, TDX shall invoice the CUSTOMER for the following charges:

- a. (Where the Basic Rate is expressed as an hourly rate) an amount equal to the Basic Rate multiplied by the actual number of hours which the Equipment has been operated during that month.
- b. (Where the Basic Rate is expressed as a monthly rate) an amount equal to the Basic Rate; and
- c. Any other relevant charges referred to in the Agreement Particulars which have been incurred during that month.

4.2 Where the Term starts or ends part way through a calendar month, the charges shall apply to (and, where relevant, shall be apportioned for) the relevant part month as appropriate.

4.3 The charges for the Services are exclusive of any GST and other applicable government taxes, levies, and duties (excluding any taxes in the nature of income tax) which will be payable by the CUSTOMER in addition to the charges.

4.4 TDX may, by written notice to the Customer, vary the Rate with effect from 1st April each year during the Term to reflect changes in its service supply costs. These cost changes include fluctuations in material or labour expenses and any additional costs anticipated due to the Machine's service history. Alternatively, TDX may adjust the Rate based on the change in the Consumer Price Index (CPI) over the most recent 12-month period for which data is available, or if the annual change exceeds 5%.

4.5 The CUSTOMER shall pay invoices to the bank account nominated by TDX by the 20th day of the month following the month to which the charges relate.

4.6 If the CUSTOMER fails to make any payment due to TDX under this Agreement by the due date for payment, then, without limiting TDX's remedies under clause 6:

- a. The CUSTOMER shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, at the rate of 20% per annum (accruing daily); and
- b. TDX may suspend the supply of Services (and any services under any other Agreement with the CUSTOMER) until the payment has been made in full, or
- c. Terminate this agreement by written notice to the Client, but in each case without prejudice to any of TDX's rights and remedies.

If TDX elects to suspend service, TDX shall not be liable for any loss or damage

(including any loss or damage resulting from any delay, loss of use of any equipment or any deficiency in any equipment) and neither will TDX be liable for any injury to any person or damage to any property arising from or caused by any lack of service. Upon resumption of service, the Client will reimburse TDX for any cost TDX incurs as a result of or occasioned by the suspension of service.

4.7 The CUSTOMER has the responsibility to maintain a clean and current trade account with TDX. Failure to do so may result in service suspension.

5 LIMITATION OF LIABILITY

5.1 TDX's liability (whether in contract, tort (including negligence) or otherwise) for any loss or damage suffered or incurred by the CUSTOMER arising directly from any act or omission of TDX shall be limited to charges paid by the CUSTOMER in the three months prior to the event giving rise to the liability.

5.2 In no event shall TDX be liable (whether in contract, tort (including negligence) or otherwise) for any loss (whether direct or indirect) of profits, business, anticipated savings, or other economic loss or for any indirect, special, or consequential loss, even if TDX was or should have been aware of the likelihood of such loss.

5.3 No action regardless of form may be brought by the CUSTOMER against TDX more than one year after the cause of action has arisen.

6 TERMINATION

6.1 Either party may terminate the Agreement at any time and with immediate notice to the other party if the other party:

- a. Commits any continuing or material breach of any of the provisions of the Agreement (or any other Agreement between the parties) and, in the case of a breach which is capable of remedy, fails to remedy the breach within 10 Business Days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- b. Goes into liquidation.
- c. Is removed from the New Zealand Companies Register other than as part of an amalgamation, in which the other party is one of the companies being amalgamated.
- d. Has a receiver or statutory manager appointed in respect of itself or any material part of its assets.
- e. Has an application made to a Court for, or a resolution proposed for, or any other step is taken in anticipation of, the appointment of an administrator or has an administrator appointed.
- f. Makes any assignment to, or enters any arrangement for the benefit of, its creditors generally (other than for the purposes of a solvent restructuring which has

previously been approved in writing by the first party, such approval not to be unreasonably withheld or delayed); or

- g. Becomes unable to pay its debts as they fall due or is presumed under Section 287 of the Companies Act 1993 to be unable to pay its debts.

6.2 Either party may terminate this Agreement for convenience at any time by giving to the other party not less than one month's written notice to that effect [(including, in the case of the CUSTOMER, where the Machine is being sold or otherwise disposed of by the CUSTOMER)].

6.3 The rights to terminate the Agreement given by this Clause 6 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

6.4 Upon the expiry or other termination of this Agreement:

- a. Despite any other provisions of the Agreement, the terms of Clauses 3.1, 4, 5, 6, 8, 9 and 10 (together with any terms in the Agreement Particulars which are expressed to continue in force following termination) shall continue in force in accordance with their terms.
- b. All amounts accrued but unpaid pursuant to this Agreement shall forthwith become due and payable; and
- c. Where this Agreement is terminated under Clause 6.2 (and the Basic Rate is expressed as a monthly rate) the CUSTOMER shall pay to TDX such amount as shall be required by TDX to cover its costs for the Services to the termination date, together with its usual margin, along with the full outstanding balance of any one-off equipment upgrades and or parts included in the agreement and fitted while under the agreement.

7 FORCE MAJEURE

7.1 Despite any other provision of the Agreement, TDX shall not be in breach of this Agreement, or otherwise be liable to the Customer, for any delay in performance or non-performance of any of its obligations under the Agreement, to the extent that the delay or non-performance is due to any circumstances beyond its reasonable control (including, without limitation, any strike, lockout or other industrial action), and the time for performance of that obligation shall be extended accordingly.

8 DISPUTES

8.1 If a party believes that there is a dispute in respect of this Agreement, it will first notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to a senior representative of each party for resolution. If such senior representatives do not resolve the dispute within 10 Business Days, either party may pursue its legal remedies, provided that a party will consider any alternative dispute resolution process proposed by the other party prior to

pursuing such legal remedies. Nothing in this Clause 8 will prevent either party from applying for urgent interim relief from a Court of competent jurisdiction.

9 NOTICES

9.1 Every notice given or required to be given under the Agreement (Notice) shall be in writing. A Notice shall be served on a party at the address for service of that party set out in the Agreement Particulars or to such other address in New Zealand as that party shall have notified the other party in accordance with this clause.

9.2 Every Notice shall be delivered by hand or sent by courier or email. To be valid, a Notice must be despatched on a Business Day.

9.3 A Notice shall be deemed to be served, if by hand at the time of delivery and, if posted, at 10.00am on the third Business Day after the day it was put in the post. If sent by email, it shall be deemed to be served at the time of despatch, if despatched before 5.00 pm and in any other case at 10.00am on the first Business Day after the date of despatch.

9.4 In proving service of Notice it shall be sufficient to prove that delivery was made or that the envelope containing the Notice was properly addressed and posted by prepaid post or that the email was despatched from the sender's email server without the sender receiving any "out of office" autoreply or other indication of non-receipt.

10 GENERAL

10.1 This Agreement is binding on and shall apply for the benefit of the parties' personal representatives, successors in title and permitted transferees and assignees.

10.2 This Agreement constitutes the entire Agreement between the parties relating to its subject matter and supersedes all previous agreements between the parties relating to that subject matter.

10.3 Any variation or waiver of any terms of this Agreement shall not be binding unless set out in writing, expressed to amend this Agreement, and signed by or on behalf of the parties.

10.4 None of the CUSTOMER's rights or obligations under this Agreement may be assigned or transferred without TDX's prior written consent.

10.5 This Agreement shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

10.6 If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid, or unenforceable the remaining provisions, or the remainder of the provision concerned, shall continue in effect.

10.7 Any failure or delay in enforcing compliance with any term of this Agreement shall not be a waiver of that or any other term of this Agreement.

10.8 Unless otherwise agreed in writing by TDX, in the event of any conflict between the terms of this Agreement, the following terms will apply and prevail in descending order of priority:

- a) The Agreement Particulars.
- b) Any Schedules.

- c) These General Terms; and
- d) Any Annexures.

10.9 This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each party may enter into this Agreement by executing a counterpart. The parties acknowledge that this Agreement may be executed by an exchange and emailed PDF copies and execution of this Agreement by that means is valid and sufficient execution.

SCHEDULE 1

Services:

Where the Services are described in the Agreement Particulars as **Blue level services**, they comprise a **preventive maintenance program** only and include:

- a) The provision of parts, consumables, and lubricants required to carry out scheduled servicing of the machine in accordance with the manufacturer's recommended maintenance intervals. All scheduled servicing is performed by a fully trained technician and includes associated labour. Oil sampling and engine belt replacement are included as standard where applicable.
- b) Repairs outside of scheduled maintenance (including component failure or unscheduled breakdowns) are **not included** and will be quoted and charged separately unless otherwise agreed in writing.
- c) Telematics services (including CareTrack access to machine hours, location, or operational data) are **not included** as part of the blue level service and may be supplied as an optional extra where fitted to the machine and subject to applicable subscription charges.

Where the Services are described in the Agreement Particulars as **Gold level services**, they comprise a **comprehensive repair and maintenance program** with fixed costs and include:

- a) The provision of all parts, consumables, and lubricants required to service and maintain the machine over the term of the agreement in accordance with the manufacturer's guidelines. All scheduled servicing and maintenance labour is performed by a fully trained technician. Oil sampling and engine belt replacement are included as standard where applicable.
- b) Coverage for necessary mechanical repairs arising from normal operation and wear, including both parts and labour, to support maximum machine availability, subject to any exclusions or limitations set out in the Agreement.
- c) Telematics and connected services (including CareTrack reporting, fuel consumption data, utilization, idling time, or machine performance insights) are **not included** by default and may be provided only where the machine is equipped accordingly and the Customer elects to subscribe to such services at additional cost.
- d) Where telematics services are separately subscribed to, TDX may provide support such as machine performance reporting and operational insights derived from

available data; however, operator behaviour monitoring and advanced analytics are not included unless expressly agreed.

Inclusions

This Agreement is based upon the work being carried out during normal working hours (0700hrs to 1700hrs Monday to Friday), unless otherwise indicated. Work carried out outside these hours or on the weekend or statutory holidays, at the CUSTOMERS request, the CUSTOMER will be charged the difference of the standard labour rate vs. the overtime rate.

Any additional inclusions, special conditions, or requirements expressly stipulated in this contract, including those added on a per-contract basis and identified as *"Inclusions"*, shall form part of this agreement, and prevail in the event of any inconsistency with these standard Terms and Conditions.

Exclusions

The Services shall exclude the following:

- Washing/cleaning of the Machine, tyres, undercarriage, ground engagement components replacement/repair, paint work, chrome, upholstery, door trims, carpet, floor mats and roof lining, glass, accident damage, bodywork, light bulbs and fuses.
- Service or repair of any equipment not fitted to the Machine as originally manufactured.
- Supply of fuel, top-up of any kind, introduction of anti-freeze or the application of rust inhibiting agent.
- Any repair work which is required, in whole or in part, as a result of (i) any negligent act or omission in driving, servicing, loading, repairing or otherwise dealing with the Machine, (ii) faulty repairs or maintenance being carried out by any person other than TDX or (iii) failure of any person to comply with any instructions issued by the manufacturer of the Machine (including removal or exchange of any components of the Machine);
- Any repairs required due to operating the equipment in excess of the manufacturer's recommendations are not covered under this contract.
- Any repair work which the CUSTOMER is entitled to carry out at the expense of any other person, including work covered by an insurance policy;
- Any fitting or other work in order for the Machine to comply with any law;
- Any damage caused by [inappropriate] use of the Machine, including use of unsuitable supplies, improper fuel, or overloading;
- Any damage caused by the work environment of the Machine, including but not limited to corrosion due to abrasive materials,

failure, or premature wear to a component due to a harsh working environment.

- Any damage caused by accident, theft, wilful misconduct, fire, abuse, vandalism, acts of third parties or similar events;
- Any damage resulting from misuse or excessive force of any interior cab equipment on the machine.
- Any work to repair damage or other work cause by the CUSTOMER failing to make the Machine available to us to carry out the Services or Repairs.
- Unless otherwise stated in the Agreement, the Work shall not include Travel to and from site.
- Delivery to and collection of, including towing, salvage, freight, or other machine transportation charges.
- Work required outside the borders of the Country where the Agreement was signed.

Any terms not mentioned in this specific Customer Support Agreement can be found on the back of all invoices and on our website <https://www.tdxltd.co.nz/info/terms>.