

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions:

- (a) **Agreement** means the agreement between Essential Energy and the Supplier consisting of these terms and conditions, the Purchase Order and any applicable Specifications;
- (b) **Claim** includes any request, demand or entitlement in relation to, arising out of or in connection with this Agreement or any Supply;
- (c) **Delivery Date** means:
- (i) in relation to Goods, the date for delivery of the Goods; and
 - (ii) in relation to Services, the date for completion of the Services,
- stated in the Purchase Order;
- (d) **Goods** means the item(s) to be supplied by the Supplier set out in the Purchase Order (if any);
- (e) **GST** means the goods and services tax imposed under the *A New Tax System (Goods & Services Tax) Act 1999* and, unless otherwise defined in this Agreement, terms defined in that Act have the same meaning in this Agreement;
- (f) **Insolvency Event** means, in relation to the Supplier: an application or order is made to or by a court or a resolution is passed for the winding up of the Supplier or notice of intention to propose such a resolution is given; or a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) is appointed in respect of the Supplier, or the whole or any part of its undertaking or property;
- (g) **Loss** includes any losses, damages, liabilities and costs (including legal expenses);
- (h) **Purchase Order** means the purchase order issued in writing by Essential Energy to the Supplier, including purchase orders issued electronically to the Supplier;
- (i) **Services** means the services to be provided by the Supplier set out in the Purchase Order (if any) and any related services, functions or responsibilities not specifically described in the Purchase Order which are reasonably required for the proper performance and provision of such services;
- (j) **Specifications** means, in relation to any Goods or Services:
- (i) Essential Energy's required functionality and performance criteria for the Goods or Services; and
 - (ii) the functional and performance specifications set out or referred to in the Supplier's standard documentation for the Goods or Services,

and in the event of any conflict or inconsistency between the functionality and performance criteria referred to in paragraphs (i) and (ii) immediately above, the functionality and performance criteria referred to in paragraph (i) prevails to the extent of such conflict or inconsistency;

- (k) **Statement of Business Ethics** means the statement of business ethics set out on Essential Energy's website www.essentialenergy.com.au, which may be updated from time to time by Essential Energy
- (l) **Supplier** means the party identified as the Vendor in the Purchase Order;
- (m) **Supply** means the Goods to be supplied or the Services to be performed and the whole of the works to be executed in accordance with this Agreement;
- (n) **WHS Act** means the *Work Health and Safety Act 2011* (NSW); and
- (o) **WHS Regulation** means the *Work Health and Safety Regulation 2017* (NSW).

1.2 Interpretation

- (a) Reference to:
- (i) the singular includes the plural and the plural includes the singular;
 - (ii) a party includes the party's executors, administrators, successors and permitted assigns;
 - (iii) a thing includes the whole and each part of it

separately; and

- (b) "Including" and similar expressions are not words of limitation.

2 PURCHASE ORDERS

2.1 Conditions of Purchase Orders

These terms and conditions apply to all Purchase Orders issued by Essential Energy.

2.2 Acceptance by Supplier

Upon the Supplier's acceptance (whether in writing or by conduct) of the Purchase Order, the Supplier agrees to the terms and conditions of this Agreement.

2.3 Variation

Any variation to this Agreement, including any Purchase Order or Specifications, must be in writing and signed by the parties.

Under no circumstances will any terms or conditions contained in, or endorsed upon, any correspondence, invoices or documents issued by the Supplier in connection with this Agreement or otherwise stated by the Supplier in making a quotation or accepting or acknowledging a Purchase Order, be binding upon Essential Energy or deemed to form any part of this Agreement.

3 FOR THE SUPPLY OF GOODS

3.1 Supply of Goods

The Supplier must supply the Goods and carry out the whole of work required by this Agreement in a proper and workmanlike manner to the satisfaction of Essential Energy and in accordance with the terms and conditions of this Agreement.

3.2 Delivery

The Supplier must deliver the Goods to the shipping address stated in the Purchase Order on the Delivery Date, unless the Supplier is notified otherwise in writing by Essential Energy.

If it is apparent to the Supplier, that the Delivery Date will not be met, then, without prejudice to Essential Energy's other rights or remedies, the Supplier must immediately notify Essential Energy in writing and take all necessary corrective action that Essential Energy may direct at the Supplier's cost.

3.3 Inspection prior to delivery

Prior to delivery, Essential Energy may enter the Supplier's premises to make such inspections and tests as may be deemed necessary by Essential Energy to ensure that the Goods comply with the terms and conditions of this Agreement and the Supplier must give all necessary assistance with such inspections and tests. Such inspections may include safety and environmental reviews, inspections, investigations and audits of the Supplier's work practices and systems.

3.4 Risk

Goods supplied by the Supplier to Essential Energy are entirely at the Supplier's risk up to the time of acceptance of the Goods by Essential Energy.

3.5 Passing of ownership

Ownership of the Goods passes to Essential Energy upon the earlier of delivery of the Goods by Essential Energy and payment, without prejudice to any rights of rejection that Essential Energy may have.

3.6 Warranties

The Supplier represents, warrants and undertakes in relation to the Goods that:

- (a) the Goods will be free from defects;
- (b) it has the right to sell the Goods and upon delivery to Essential Energy, the Goods are free from any charge or other encumbrance;
- (c) where the Goods are supplied by reference to a sample or description, the Goods correspond with the sample and description, in terms of quality and all other respects;
- (d) the Goods are of merchantable quality; and
- (e) it has informed itself of the purposes for which the Goods are to be acquired by Essential Energy and that the Goods are fit for those purposes and that it is reasonable for Essential Energy to rely on the skill and judgment of the Supplier.

4 FOR THE PROVISION OF SERVICES

4.1 Performance of Services

The Supplier must perform the Services in a proper and workmanlike manner to the satisfaction of Essential Energy and in accordance with the terms and conditions of this Agreement.

4.2 Time for performance

The Supplier must perform the Services promptly and in any event, in accordance with any time-table which has been agreed in writing by Essential Energy for the performance of the Services, and complete performance of the same by the Delivery Date.

4.3 Warranties

The Supplier represents, warrants and undertakes in relation to the performance of the Services:

- (a) that when performing the Services, it will use parts, material and other goods which are new, of good and merchantable quality and fit for their intended purpose, and which meet or exceed current industry standards;
- (b) that it will use proper and tradesman-like workmanship;
- (c) that it has informed itself of the nature of the Services and the materials necessary for the performance of the Services; and
- (d) that it has thoroughly inspected the site at which the Services are to be performed.

5 DEFECTS

The Supplier must for at least twelve (12) months after the Delivery Date (or such longer period as may be agreed between the parties) promptly correct any defect or fault (and any consequential effects of any defect or fault) that is found to exist in or arisen from the Goods, the performance of the Services or the carrying out of any works at its cost, including by replacing the relevant Goods or re-performing the relevant Services if requested by Essential Energy.

6 SUPPLY NOT IN ACCORDANCE WITH AGREEMENT

6.1 Notice of Claim

Essential Energy may inspect the Supply after delivery of the Goods or performance of the Services and may give written notice to the Supplier of any Claim that the Supply is not in accordance with this Agreement. If requested by Essential Energy, the Supplier must promptly replace the relevant Goods or re-perform the relevant Services at the Supplier's cost.

6.2 Essential Energy may withhold payment

In the event of any Claim by Essential Energy against the Supplier, Essential Energy may withhold payment of any amount owing by Essential Energy to the Supplier on any account whatsoever, whether under this Agreement or any other agreement, until such Claim is resolved.

The Supplier may not make a set-off against Essential Energy for any reason whatsoever.

6.3 Costs of return of Goods

If Essential Energy Claims that the Goods are not in accordance with this Agreement and subsequently returns the Goods to the Supplier at Essential Energy's expense, the Supplier must refund or reimburse any Losses incurred by Essential Energy.

7 LIQUIDATED DAMAGES

If liquidated damages are specified in the Purchase Order and the Supplier fails to meet the Delivery Date, then, without prejudice to Essential Energy's other rights and remedies, for every day between the Delivery Date and:

- (a) the actual date of delivery of the Goods or completion of the Services; or
- (b) the date on which Essential Energy terminates this Agreement,

whichever is the earlier, the Supplier must pay liquidated damages at the rate set out in the Purchase Order to a maximum of thirty (30%) of the total purchase price. The parties acknowledge and agree that such liquidated damages are a genuine pre-estimate of the minimum damage which Essential Energy would suffer by reason of the Supplier's failure and that they are not intended to quantify the full extent of Essential Energy's Losses.

In addition to any liquidated damages specified in the Purchase Order, Essential Energy may claim general damages from the Supplier in relation to the Supplier's failure to meet the Delivery Date.

8 PRICE

8.1 Price in Purchase Order

The price payable for the Supply is the price set out in the Purchase Order.

8.2 Costs included in price

Unless otherwise stated, the price:

- (a) is exclusive of GST, but includes all other taxes, duties, levies, fees or charges; and
- (b) includes all of the Supplier's costs, including all packaging, loading, delivery to the address stated in the Purchase Order, testing and certification and travel and subsistence expenses.

8.3 Partial supply

If the Supplier is unable to deliver or perform the Supply in accordance with the Purchase Order, Essential Energy may accept partial Supply and these terms and conditions continue to apply to the Goods or Services delivered or performed.

9 INVOICE AND PAYMENT

9.1 Supplier to provide tax invoice

The Supplier must provide a valid tax invoice for each Purchase Order and attach all necessary substantiating documentation.

9.2 Payment of invoice

Subject to the performance by the Supplier of its obligations under this Agreement, Essential Energy will pay all correct and valid tax invoices in accordance with any payment terms set out in the Purchase Order (or if nothing is specified in the Purchase Order, within forty-five (45) days of the date of receipt of an invoice).

Unless otherwise stated, all invoices must be issued in and all payments will be made in Australian Dollars.

10 GENERAL SUPPLIER OBLIGATIONS

10.1 Further Warranties

The Supplier represents, warrants and undertakes to Essential Energy that in performing this Agreement:

- (a) it will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence;
- (b) it has obtained and will maintain all necessary consents, licences, permits and authorisations (other than those which Essential Energy is expressly required to obtain under this Agreement);
- (c) it will comply with the Statement of Business Ethics and will ensure all Supplier personnel who provide the Services (either in part or in full) are of sound character and comply with the Statement of Business Ethics;
- (d) it will comply with all applicable laws; and
- (e) that it is a GST registered entity.

10.2 No reliance

The Supplier warrants that it has entered into this Agreement without relying on any representation by Essential Energy or any other person.

The Supplier agrees to make its own enquiries to confirm the accuracy of any information or documents supplied by Essential Energy, and may not rely on any such information or document.

10.3 Documents

All necessary documentation and certification must be supplied to Essential Energy and the Supply will not be considered complete until all necessary documents and certificates have been received by Essential Energy in correct, valid and good order.

Any document or other property (tangible or intangible) supplied by Essential Energy to the Supplier remains (as between Essential Energy and the Supplier) the property of Essential Energy and must be returned immediately to Essential Energy upon request.

10.4 Confidentiality and publicity

The Supplier must treat all information received or obtained by the Supplier in connection with this Agreement relating to the business and affairs of Essential Energy as confidential, and must keep the same strictly confidential and not disclose it to any person, other than to the Supplier's officers and employees and professional advisers on a strict "need-to-know" basis or as may be required by applicable law, without the prior written consent of Essential Energy.

The Supplier must not disclose, including in its advertising, referral or publicity material, the existence of this Agreement or the terms of its relationship with Essential Energy or use Essential Energy's name, brand or trade marks for publicity or reference purposes without the prior written consent of Essential Energy.

11 INDEMNITY

11.1 Supplier indemnities

The Supplier is liable for and indemnifies Essential Energy and its officers, agents and employees in respect of any Losses sustained, incurred or suffered by any of them as a result of:

- (a) any defect, inherent or otherwise, in the Supply or any part of the Supply, including but not limited to the replacement of any defective Supply by the Supplier at no cost to Essential Energy;
- (b) any Claim that the receipt, possession or use of the Goods or Services by Essential Energy infringes the intellectual property right or other rights of any person;
- (c) any breach of this Agreement by the Supplier; and
- (d) any personal injury, death, disease or illness (including mental illness) of any person or loss of, or damage to, or loss of use of, any property of any person to the extent caused by the Supplier.

11.2 Exclusion of loss

Essential Energy will not under any circumstances be liable to the Supplier for any loss of profit or for any loss of an indirect or special nature whatsoever claimed by the Supplier.

12 INSURANCE REQUIRED BY SUPPLIER

Unless otherwise specified in the Purchase Order, the Supplier must hold the insurances that a prudent supplier of the Goods and Services would hold, including:

- (a) insurance to cover physical loss or damage to the Goods;
- (b) comprehensive third party, products liability \$20 million and public liability insurance of \$20 million;
- (c) workers compensation insurance as required by law; and
- (d) if Services are to be provided, professional indemnity insurance of not less than \$5 million.

If requested by Essential Energy, the Supplier must provide certificates of currency to Essential Energy which confirm the Supplier holds such insurances.

13 INTELLECTUAL PROPERTY

The Supplier acknowledges that Essential Energy owns the intellectual property rights in any design, drawing, specification or document (Works) provided to or produced for Essential Energy pursuant to this Agreement.

The Supplier hereby absolutely assigns and transfers (and will procure that its personnel, affiliates, sub-contractors and suppliers assign and transfer) to Essential Energy with full title guarantee all existing and future intellectual property rights throughout the entire world in the Works, including all statutory and common law rights attaching thereto.

14 GOODS AND SERVICES TAX

14.1 GST

Except where express provision is made to the contrary and subject to this clause 14, any amount that may be payable under this Agreement is exclusive of any GST. If a party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

14.2 Input Tax Credit

To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an Input Tax Credit.

14.3 Tax invoice

A party's right to payment under this Agreement is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

15 DEFAULT AND TERMINATION

15.1 Termination

Essential Energy may terminate this Agreement in whole or in part with immediate effect by providing written notice to the Supplier if:

- (a) the Supplier is in breach of this Agreement and such breach is incapable of being remedied (including if the Supplier advises Essential Energy that it is unable or unwilling to complete performance of the Agreement);
- (b) the Supplier is in breach of this Agreement and such breach is capable of being remedied, but the Supplier fails to remedy the breach within seven (7) days of its receipt of a notice requiring it to do so;
- (c) the Supplier or the Supplier's personnel act or omit to act in a

manner calculated or likely to bring Essential Energy into disrepute; or
the Supplier is subject to an Insolvency Event,

- (d) (each an **Event of Default**).

15.2 Recovery of Essential Energy's costs

If the Supplier is subject to an Event of Default or Essential Energy terminates this Agreement under clause 15.1, Essential Energy may engage others to, or itself, carry out any part or the whole of the remaining Supply. Essential Energy may determine the reasonable cost so incurred by Essential Energy and any other Losses sustained by Essential Energy as a consequence, and the same will constitute a debt due and owing by the Supplier to Essential Energy.

15.3 Termination for convenience

Essential Energy may for convenience and without cause immediately cancel a Purchase Order and terminate this Agreement (in whole or in part) at any time by written notice to the Supplier.

15.4 Procedure upon termination or taking work out of hands

If Essential Energy terminates this Agreement or engages others to carry out or itself carries out any part or the whole of the remaining Supply, Essential Energy may without payment of compensation to the Supplier:

- (a) take possession of all documents (including design documentation) and the like in the Supplier's possession which is connected with the Supply and reasonably required by Essential Energy to facilitate completion of the Supply; and
- (b) take an assignment of the Supplier's rights and benefits under any contracts with sub-suppliers, including any warranties and guarantees (the Supplier must do all things necessary to effect such an assignment).

16 DISPUTE RESOLUTION

16.1 Dispute Notice

If a dispute arises between Essential Energy and the Supplier out of or in connection with this Agreement, either party may give the other written notice of the dispute. The notice must specify in reasonable detail the basis of the dispute.

Neither party will commence proceedings (other than for injunctive or other urgent relief) in respect of any such dispute before this clause 16 has been complied with.

16.2 Meeting

If a dispute notified under clause 16 has not been settled within 7 days of the date of the notice, either party may require by further notice in writing to the other, that a person holding a position of senior management of each of the parties meet in good faith and on a without prejudice basis with a view to resolving the dispute.

16.3 Continued performance

Despite the existence of a dispute, the Supplier must continue to perform its obligations under this Agreement.

17 GENERAL

17.1 Assignment

The Supplier may not sub-contract, assign, novate, transfer or otherwise dispose of or any or all of its rights and/or obligations under this Agreement without the prior written consent of Essential Energy.

The Supplier is liable for the acts and omissions of its personnel and its affiliates, sub-contractors and suppliers, and each of their personnel, as if such acts and omissions were those of the Supplier itself.

17.2 Entire understanding

This Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

17.3 Jurisdiction

The law governing these terms and conditions is the law of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

17.4 Rights cumulative

The rights, powers, privileges and remedies provided under any provision of this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Agreement or by applicable law or otherwise.

17.5 No waiver

No waiver of any right under these terms and conditions will be of any force or effect unless such waiver is in writing, signed by the party making the waiver and is expressly stated to be a waiver. Either party's waiver or failure to enforce any rights under these terms and conditions will not in any way affect or limit that party's right thereafter to enforce strict compliance with the terms and conditions.

17.6 Civil Liabilities Act excluded

The parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this Agreement.

17.7 Vienna Convention

The application of the *Sale of Goods (Vienna Convention) Act 1986* (NSW) is excluded.

17.8 Time of the essence

Time is of the essence of this Agreement.

17.9 Personal Property Securities Act

Essential Energy may, by notice to the Supplier, require it to take all steps or do any other thing that Essential Energy considers necessary or desirable to ensure that this Agreement or any security interest arising hereunder, is enforceable against the Supplier or any third party or to protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of Essential Energy under this Agreement. The Supplier must comply with the requirements of such a notice within the time stated in the notice at the cost of the Supplier.

The Supplier waives any rights to receive a verification statement.

To the extent that Chapter 4 of the *Personal Property Securities Act 2009* (Cth) (PPSA) would otherwise apply to enforcement by Essential Energy of any security interest in collateral, the parties agree that, to the extent the PPSA allows, sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply.

17.10 Work Health and Safety

Without limiting clause 10.1, the Supplier must comply with the WHS Act and the WHS Regulation, including to the extent that the Supplier is a person conducting a business or undertaking (including to whom any of sections 20 to 26 of the WHS Act applies).

The Supplier must conduct risk assessments as necessary and put in place measures to eliminate or reduce risks to health and safety arising from the provision of the Goods and Services.

The Supplier must produce and supply to Essential Energy, if requested, all documentation requirements of the WHS Act and WHS Regulation.

In respect of any risks arising from the provision of the Goods or Services, the Supplier must provide information to Essential Energy about any joint duties owed under the WHS Act and must consult and cooperate with Essential Energy about these risks.

To the extent that Part 6.4 of Chapter 6 of the WHS Regulation applies to the Supply:

- (a) Essential Energy:
 - (i) engages the Supplier as principal contractor for the Supply;
 - (ii) authorises the Supplier to have management and control of the Supply and any workplace relating to the Supply; and
 - (iii) authorises the Supplier to discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the WHS Regulation in connection with the Supply;
- (b) the Supplier accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the WHS Act and the WHS Regulation; and
- (c) to the extent that the Supplier is, for any reason, taken or otherwise found not to be the principal contractor for the Supply, the Supplier must discharge, exercise and fulfil the functions, duties and obligations of a principal contractor in respect of the Supply as if the Supplier was the principal contractor for the Supply.

Except as otherwise provided in clause 1.1, all terms used in this clause 17.10 have the meanings given to them in the WHS Act and the WHS Regulation.

17.11 NSW Government Code of Practice for Procurement: Building and Construction

The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) may apply to the Supply. By agreeing to perform the Supply the Supplier warrants that it is not precluded from entering into the Agreement and accepting the works and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.

17.12 AER Electricity Distribution Ring-fencing Guideline

The Australian Energy Regulator (**AER**) Electricity Distribution Ring-fencing Guideline (**Ring-fencing Guideline**) may apply to the Supply. By agreeing to perform the Supply, the Supplier warrants that if providing Services under this Agreement that enable or assist Essential Energy to supply direct control services, the Supplier will comply with clauses 4.1, 4.2.1, 4.2.2, 4.2.3 and 4.3.2 of the Ring-fencing Guideline as if the Supplier was Essential Energy