

CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

1. Definitions

In these Conditions:

"**AER Ring Fencing Guideline**" means AER Ring-Fencing Guideline – Electricity Distribution Version 2 – October 2017, as amended from time to time;

"**Conditions**" means these terms and conditions for the supply of Goods and/or Services;

"**Customer**" means the customer named in the Order Form;

"**Delivery Address**" means the delivery address on the Order Form;

"**Goods**" means the goods to be supplied pursuant to an Order;

"**GST**" means goods and services tax within the meaning of the GST Act;

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**Order**" means the completed Order Form and these Conditions;

"**Order Form**" means the attached order form;

"**Price**" means the price specified in the Order Form;

"**Services**" means the services to be supplied pursuant to an Order and all necessary ancillary and incidental work;

"**Supplier**" means the supplier of the Goods and/or the Services; and

"**Tax Invoice**" has the meaning defined in the GST Act.

2. Preliminary

2.1 Acceptance (in whatever form) of an Order constitutes acceptance of these Conditions to the exclusion of any other terms and conditions. Any terms or conditions that are contained in any other document used by the Supplier or contained in correspondence or documents passing between the Customer and the Supplier:

(a) have no effect and will not affect these terms and conditions or any agreement between the Customer and Supplier in connection with the subject matter of the Order, even if the Customer has notice of those terms or conditions; and

(b) do not constitute an offer or a counter-offer by the Supplier.

2.2 Any prior representations, negotiations, arrangements, understandings or communications between the parties in connection with the Order are superseded by these Conditions.

2.3 No changes to an Order may be made without the Customer's written consent.

2.4 The Customer may at any time cancel an Order in whole or in part by written notice to the Supplier and no penalty or liability for damages will be incurred by the Customer in connection with such cancellation.

3. Delivery of Goods

3.1 The Supplier will:

(a) deliver the Goods to the Delivery Address and by the time specified in the Order, or within a reasonable time if no time is specified;

(b) ensure that Goods delivered match the Goods ordered;

(c) package the Goods so as to prevent damage to the Goods;

(d) ensure that the Goods are prepared appropriately for shipment and to at least the carrier's requirements; and

(e) notify the Customer as soon as practicable if the delivery of the Goods is likely to be delayed.

3.2 The Supplier is responsible for all taxes (excluding GST), duty and transport costs, including freight and insurance charges, incurred in delivering the Goods to the Delivery Address.

3.3 The Customer may at any time before the delivery of the Goods inspect or test the Goods at the Supplier's premises or elsewhere.

3.4 Risk in the Goods remains with the Supplier until acceptance of the Goods at the Delivery Address, and the Customer will be deemed to have accepted the Goods if it does not inform the Supplier within 30 days of delivery that the Goods are unacceptable, for any reason whatsoever.

3.5 Title to the Goods free of encumbrances will pass to the Customer upon payment of the Price and any applicable GST.

3.6 The Customer may reject the Goods by informing the Supplier within 30 days of delivery that the Goods are not acceptable.

3.7 The Customer will not pay for Goods that it rejects under clause 3.6 and will return the Goods to the Supplier only if so requested. All expense and risk in rejected Goods remains at all times with the Supplier.

3.8 The Customer may at any time return to the Supplier, at the Supplier's cost, Goods found to contain latent defects, and the Supplier must repay the Customer the Price paid for such defective Goods.

3.9 The Customer's signing of the Supplier's delivery note or documentation does not mean that the Customer has inspected or is satisfied as to the quality of the Goods but only as to the fact of delivery.

3.10 The Supplier must ensure the Goods are adequately insured until they are delivered to the Customer.

3.11 If either party determines that any quantity of the Goods should be recalled for any reason, that party will give the other party written notice of its intention to recall that quantity of the Goods and specify its reasons. The Supplier will be solely responsible for any recall of the Goods (either at the request of a regulatory authority or one of the parties) and agrees to work with the Customer to minimise the disruption caused by any such recall.

4. Provision of Services

4.1 The Supplier must provide the Services:

(a) competently;

(b) safely;

(c) according to all directions given by the Customer;

(d) in compliance with all applicable safety regulations, ordinances, relevant laws and industry standards;

(e) in compliance with the Customer's work practices and procedures, as notified by the Customer to the Supplier from time to time (with all necessary protective clothing or equipment to be provided and kept in good repair by the Supplier);

(f) by employees annually trained in basic first aid and CPR techniques; and

(g) if the Customer is AusNet Electricity Services Pty Ltd and the Services will enable or assist the Customer to supply direct control services (as defined under the National Electricity Rules), in compliance with:

(i) clauses 4.1, 4.2.1, 4.2.2 and 4.3.2 of the AER Ring Fencing Guideline; and

(ii) clause 4.2.3 of the AER Ring Fencing Guideline in relation to the brands of the Customer,

as if the Supplier was the Customer.

4.2 Where the Services are to be performed on the Customer's premises or in the vicinity of gas or electricity assets, the Supplier must:

(a) not commence work until the Customer has issued the relevant authority form, unless the Supplier is already appropriately authorised under the applicable laws and regulations; and

(b) strictly observe all requirements set out in the applicable laws and regulations.

- 4.3 At any time, if the Customer is dissatisfied with the Supplier's provision of the Services, it may request the Supplier to provide the Services again and the Supplier must perform the work at no extra charge to the Customer.
- 4.4 The Supplier must not subcontract or delegate the provision of the Services to any other party without the prior written consent of the Customer. In any event, any subcontracting or delegation by the Supplier will not relieve the Supplier of any of its obligations in these Conditions.
- 5. Warranties**
- 5.1 The Supplier warrants to the Customer that the Goods:
- are owned by the Supplier free from any third party or other security interests or encumbrances immediately before delivery to the Customer's nominated delivery address;
 - are fit for the purpose for which the Goods or goods of the same kind are usually acquired and any other purpose of the Customer made known to the Supplier;
 - will function and perform in all respects as represented by the Supplier;
 - comply with any specifications, drawings, samples or other descriptions supplied by the Customer to the Supplier;
 - be provided on the basis that the Customer has the benefit of any applicable manufacturer's warranty;
 - comply with every aspect of the Goods' description in an Order or, if there is no description the highest industry quality standards for their manufacture;
 - comprise of new and unused components;
 - are of merchantable quality;
 - are free from all faults and defects;
 - will fully integrate with and operate within the Customer's existing operational environment;
 - do not, and Customer's use of the Goods will not, infringe any intellectual property rights of any person; and
 - comply with all relevant laws and Australian Standards (which compliance the Customer may require the Supplier to demonstrate on request).
- 5.2 The Supplier warrants to the Customer that the Supplier has considered and sought all applicable customs duty exemptions and concessions in respect of the Goods.
- 5.3 The Supplier warrants to the Customer that the performance of the Services:
- will comply with every aspect of the Services' description in an Order or, if there is no description, the highest industry quality standards for their performance;
 - will be performed with all due skill and care normally exercised by qualified and experienced persons in the performance of similar services;
 - will provide the functionality and performance represented by the Supplier;
 - will be provided to the Customer free of any restrictive covenants imposed by any other party; and
 - will comply with all relevant laws and Australian Standards (which compliance the Customer may require the Supplier to demonstrate on request).
- 6. Payment terms and GST**
- 6.1 Subject to clause 6.2, the amount payable for the Goods and/or Services by the Customer will be the Price exclusive of GST. The Price includes all applicable taxes (excluding GST), duties, levies and charges.
- 6.2 The Customer must pay to the Supplier any amount which is payable by the Supplier on account of GST as a consequence of any supply made to the Customer under this Order.
- 6.3 The Customer will pay the Supplier 30 days from the end of the month of receipt of a correctly rendered and valid Tax Invoice.
- 6.4 The Supplier must give to the Customer within 28 days of delivery or performance a Tax Invoice which:
- is fully compliant with the GST Act; and
 - states the Order number, full details of the Goods delivered or Services performed, the Price and any other information that the Customer may require.
- 6.5 Payment is subject to the Customer (acting reasonably) certifying that the Goods supplied or the Services performed are satisfactory.
- 6.6 The Supplier may not vary the Price of any Goods or Services without the prior written consent of the Customer.
- 7. Indemnities**
- 7.1 The Supplier indemnifies the Customer against all claims, damages, suits, actions, liabilities, losses, demands, actions, costs and expenses incurred by any person arising directly or indirectly from:
- a breach of these Conditions by the Supplier;
 - the supply of Goods and/or Services to the Customer;
 - any negligent act, omission or unlawful action by the Supplier or any of its employees, officers, agents or subcontractors;
 - any injury or death of any person or damage or destruction of any property arising as a consequence of the Supplier's acts or omissions, negligence or otherwise;
 - the Customer being deemed a "manufacturer" under the *Competition and Consumer Act 2010* (Cth); or
 - any infringement of any person's intellectual property rights in the Goods and/or Services.
- 7.2 The indemnity in clause 7.1 is a continuing indemnity and is not satisfied or discharged by any payment made pursuant to the indemnity.
- 7.3 The Supplier is deemed to be aware of the inherent dangers and risks in the Customer's activities, and accordingly the Supplier:
- releases the Customer from all liability arising from or in connection with any injury or death of the Supplier's employees, agents or contractors on the Customer's premises; and
 - must insure itself fully in respect of all potential public liability claims.
- 7.4 If in the supply of the Goods or Services, the Goods are, or any property of the Customer or its employees, agents or contractors is, damaged, the Customer may, at its election:
- require the Supplier to repair the Goods at the Supplier's cost;
 - require the Supplier to resupply the Services; or
 - deduct from the Price the cost of having the Goods repaired or the Services resupplied.
- 8. Confidentiality**
- 8.1 If in the performance of these Conditions or otherwise, the Supplier obtains or becomes aware of any personal information (as defined in the *Privacy Act 1988* (Cth)), sensitive or confidential information relating to the Customer or its business, partners or customers ("Confidential Information"), the Supplier must not, without the Customer's prior written consent, disclose to any person the Confidential Information, except to those of its employees that are involved in the completion of an Order and then on a strictly confidential basis. The Supplier must immediately notify the Customer if it knows of, or suspects, any unauthorised disclosure of the Confidential Information. This obligation survives the satisfaction or termination of an Order.

- 8.2 The Supplier must not reproduce an Order or advertise or publish any details of an Order without the Customer's prior written consent.
- 8.3 The Supplier will not, without first obtaining the written consent of the Customer:
- (a) in any manner advertise or publish the fact that the Supplier provides or has provided any goods or services to the Customer; or
 - (b) use any trade marks, trade names or business names of the Customer in the Supplier's advertising or promotional materials.
- 8.4 The Supplier must not make or authorise any press release, statement to the media or other public statement in relation to or in connection with an Order or purportedly on behalf of, or that mentions or refers to (directly or indirectly) the Customer. All enquiries from the media must be promptly referred to the Customer.
- 8.5 The Supplier must promptly notify the Customer of all events that arise in the course of providing the Goods or Services that are likely to receive media attention.
- 9. Intellectual property**
- 9.1 The Supplier assigns to the Customer ownership of all copyright and other intellectual property rights in and to all documents, drawings, maps, characters, images, photographs, artwork, blueprints, calculations, information and instructions prepared specifically for an Order.
- 9.2 The parties acknowledge and agree that each party's intellectual property existing before an Order or created otherwise than under an Order is the property of such party. To the extent that any of the Supplier's existing intellectual property is incorporated into the Goods or other deliverables supplied under an Order, the Supplier grants the Customer a perpetual, royalty-free, non-exclusive licence to use that existing intellectual property, and to allow third parties to use such existing intellectual property on behalf of, and for the benefit of the Customer.
- 10. No relationship**
- The Supplier is not an employee, agent or representative of the Customer and has no authority to act on behalf of the Customer.
- 11. Termination**
- 11.1 Without limiting the Customer's entitlement under clause 2.4, the Customer may terminate an Order (to the extent that the Order has not been fully satisfied), immediately on written notice to the Supplier if the Customer believes the Goods and/or Services provided by the Supplier are not in accordance with the Conditions, or are defective in quality, workmanship, material or are otherwise unsatisfactory or the Supplier has breached any material provision of these Conditions.
- 11.2 Following termination, the Customer will value any Goods and/or Services received to re-evaluate the Price payable for such Goods and/or Services.
- 11.3 Notwithstanding the termination of any Order, the Supplier remains liable under these Conditions to the Customer in respect of any Goods or Services provided up to the time of termination.
- 11.4 The Customer's sole liability to the Supplier as a consequence of terminating an Order (to the extent that order has not been fully satisfied), is limited to payment for those Goods and/or Services actually provided in accordance with the Order to the Customer's satisfaction.
- 11.5 Termination does not affect any pre-existing rights or obligations or either the Supplier or the Customer.
- 12. Insurance**
- 12.1 For the supply of Goods the Supplier warrants that it has in place, and will keep current, and will not vitiate or render void or voidable, public and product liability insurance for the period of the Order with a level of cover per occurrence of \$20 million.
- 12.2 For the supply of Services the Supplier warrants that it has in place, and will keep current, and will not vitiate or render void or voidable:
- (a) public liability and product insurance for the period of the Order with a level of cover per occurrence of \$20 million; and
 - (b) professional indemnity insurance for the period of the Order and for a period of six years after the Order is fulfilled with a level of cover per claim of \$10 million.
- 12.3 For the avoidance of doubt if the Supplier is providing Goods and Services under an Order the Supplier must have insurance in place as set out in clause 12.2.
- 12.4 The Supplier must provide certificates of currency to demonstrate the Supplier's compliance with this clause 12 on request by the Customer.
- 13. Force Majeure**
- The Customer is not liable for any failure to accept delivery of Goods arising out of causes beyond its control and without fault or negligence of the Customer, including war, strike, fire, pestilence, acts of God, war embargoes, acts of any government, freight embargoes, lockouts and inclement weather.
- 14. Disputes**
- Any dispute between the parties concerning an Order will be dealt with as follows:
- (a) the parties must refer the dispute to its representatives who must together attempt to resolve the dispute;
 - (b) if the dispute is not resolved under clause 14(a) within 3 weeks after such referral, the parties must refer the dispute to their respective managing directors or their agreed appointees; and
 - (c) if the dispute is not resolved under clause 14(b) within 2 weeks, the parties must appoint either a mediator or expert by agreement (failing agreement, the mediator will be nominated by the President of the Law Institute of Victoria, and the expert will be nominated by the President of the Institute of Chartered Accountants). The matters in dispute must then be promptly referred by the parties to the mediator or expert (as appropriate) for determination. The cost of the mediator or expert will be borne by the parties in accordance with the mediator's or expert's determination.
- 15. Severance**
- If a provision of these Conditions is invalid or unenforceable, it is to be read down or severed to the extent of the invalidity or unenforceability and that fact will not affect the remaining provisions.
- 16. No Adverse Construction**
- These Conditions will not be read and construed adversely in relation to a party only because that party was responsible for its drafting.
- 17. PPSA**
- 17.1 If any transaction contemplated by an Order gives rise to a security interest for the Customer under the PPSA then this clause 17 applies.
- 17.2 In this clause "PPSA" means *Personal Property Securities Act 2009* (Cth) and "security interest" and "perfected" have the meanings given to them in the PPSA.
- 17.3 To the extent permitted by the PPSA:
- (a) all provisions of the PPSA listed in sections 115(1) and 115(7) other than sections 117, 118, 134 and 135, are excluded in full and will not apply;
 - (b) the Supplier waives its right to receive each notice which section 157(3) permits to be waived;
 - (c) the Supplier waives its right to receive anything from the Customer under section 275 of the PPSA and agrees not to make any request of the Customer under that section.

17.4 For the purposes of section 275 of the PPSA, the information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by the Supplier except where required by section 275(7) of the PPSA.

17.5 The Supplier, when requested to do so by the Customer, must do all things requested of it to ensure that any Order and any security interest granted under it is fully effective, enforceable and perfected with the priority required by the Customer.

18. Governing law

An Order is to be interpreted according to the laws of Victoria and each party submits to the jurisdiction of the courts of that State.