

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;

"Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday in the place where an act is to be performed or payment is to be made;

"Business Relationships" includes direct contractual relationships and indirect connections between a party and an entity in a Supply Chain of that party;

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

"Consequential Loss" means loss of profit, anticipated profit, revenue, use, goodwill, reputation, contract or opportunity;

"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);

"Modern Slavery" means:

- (a) conduct which would constitute an offence under either Division 270 or 271 of the Criminal Code (Cth) such as slavery, servitude, forced labour, deceptive recruiting, debt bondage and any form of human trafficking; and
- (b) any form of child labour prohibited by law;

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

"Order Form" means the order form for the Goods and/or Services issued by the Customer;

"Personal Information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not;

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

"Privacy Commissioner" means the person appointed from time to time as the privacy commissioner by the Office of the Australian Information Commissioner;

"Privacy Laws" means the *Privacy Act 1988* (Cth) including the Australian Privacy Principles in Schedule 1 of the Privacy Act and any other applicable privacy legislation in any jurisdiction in which the Goods will be supplied and the Services will be performed;

"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;

"Supply Chain" means any supplier of goods, works or services to the Supplier (i.e. a Tier 1 Supplier) and the network of organisations indirectly associated with the Supplier (i.e. Tier 2 Suppliers and beyond) who transform substances into finished goods, works or services which are eventually supplied to the Customer pursuant to an Order; 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 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,

and without limiting the generality of this clause 2.1, the Supplier will be deemed to have accepted the Order if it:

- (c) supplies the Goods;
- (d) provides the Services; or
- (e) verbally or in writing (which may be electronic) states or indicates that the Order is accepted, agreed, will be fulfilled or similar.

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.

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 or otherwise in performing its obligations under an Order.

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 delivery and unloading of the Goods by the Supplier at the Delivery Address, and the Customer will be deemed to have accepted the Goods if it does not inform the Supplier within 20 Business Days of delivery that the Goods are not in accordance with the requirements of the Order.

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 20 Business Days of delivery that the Goods are not in accordance with the requirements of the Order.

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 Without limiting any other provision of these Conditions or an Order, the Customer may, within 24 months of the date of acceptance of the Goods by the Customer, 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 health or safety reasons or due to the request of a regulatory authority, 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:
- competently and safely;
 - according to all directions given by the Customer;
 - in compliance with all applicable safety regulations, ordinances, relevant laws and industry standards;
 - 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); and
 - 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:
 - clauses 4.1, 4.2.1, 4.2.2 and 4.3.2 of the AER Ring Fencing Guideline; and
 - 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:
- 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
 - strictly observe all requirements set out in the applicable laws and regulations.
- 4.3 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 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 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. Liability and risk**
- 7.1 Subject to clauses 7.2 and 7.3, the total liability of the Supplier under an Order is, to the extent permitted by law, limited to an amount equal to two (2) times the Price.
- 7.2 The limitation of liability in clause 7.1, and the exclusion of liability in clause 7.3, will not apply to the liability of the Supplier for claims, damages, suits, actions, liabilities, losses, demands, actions, costs, expenses or otherwise arising from:
- a breach of an obligation under clauses 8, 9 or 16 of these Conditions by the Supplier;
 - any negligent act or omission, or unlawful action, by the Supplier or any of its employees, officers, agents

- or subcontractors causing or contributing to any injury or death of any person or damage or destruction of any tangible property (other than the Goods);
- (c) any infringement of any person's intellectual property rights in the Goods and/or Services; or
- (d) any wilful breach, unlawful act or omission or any criminal or fraudulent act or omission of the Supplier or any of its employees, officers, agents, contractors or subcontractors.
- 7.3 To the extent permitted by law, neither the Customer nor the Supplier will be liable to the other party for any Consequential Loss suffered or incurred by the other party in connection with an Order.
- 7.4 The Supplier is deemed to be aware of the inherent dangers and risks in the Customer's activities, and accordingly the Supplier:
- (a) releases the Customer from all liability arising from any injury or death of the Supplier's employees, agents or contractors arising from the Customer's premises or activities except to the extent that liability is caused by the Customer's negligence or unlawful act or omission; and
- (b) must insure itself fully in respect of all potential public liability claims.
- 7.5 If in the supply of the Goods or Services, the Goods are damaged or the Services are not supplied in accordance with the Order, the Customer may, at its election:
- (a) require the Supplier to repair the Goods at the Supplier's cost;
- (b) require the Supplier to resupply the Services; or
- (c) deduct from the Price the cost of having the Goods repaired or the Services resupplied.
- 8. Confidentiality**
- 8.1 If in the performance of an Order or otherwise, the Supplier obtains or becomes aware of any Personal Information, 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 material.
- 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. Privacy**
- 9.1 The Supplier will at all times comply with all Privacy Laws in relation to Personal Information that is provided to it or which it has access to in the course of providing the
- Services, whether or not the Supplier is an organisation bound by the Privacy Laws.
- 9.2 If the Supplier reasonably suspects any unauthorised disclosure, use or access, attempted unauthorised disclosure, use or access to any Personal Information, or loss of such Personal Information ("**Suspected Data Breach**"), the Supplier must:
- (a) notify the Customer as soon as it becomes aware of the Suspected Data Breach;
- (b) carry out an investigation into the Suspected Data Breach at its own expense, to ascertain:
- (i) the cause of the Suspected Data Breach;
- (ii) the affected individuals (if any); and
- (iii) the Personal Information that was compromised (if any); and
- (c) promptly report its findings in relation to the Suspected Data Breach to the Customer by no later than 5 business days from the day the Supplier first became aware of the Suspected Data Breach.
- 9.3 If the Supplier becomes aware of any actual unauthorised disclosure, use or access to any Personal Information, or loss of such Personal Information ("**Data Breach**"), the Supplier must:
- (b) notify the Customer as soon as it becomes aware of the Data Breach; and
- (c) provide promptly, and without delay, provide the Customer with the full details of, and the circumstances surrounding, the Data Breach, including:
- (i) the caused the Data Breach;
- (ii) the affected individuals;
- (iii) the Personal Information that was compromised;
- (iv) security measures which should be modified to avoid futures breaches; and
- (v) any other information reasonably requested by the Customer in relation to, or which would be reasonably relevant to an investigation of, the Data Breach.
- 9.4 Where requested by the Customer, the Supplier agrees to immediately suspend the Services, the supply of the Goods or any other deliverables under an Order following notification to the Customer of either:
- (a) a Suspected Data Breach in accordance with clause 9.2; or
- (b) a Data Breach in accordance with clause 9.3.
- 9.5 The Supplier must promptly co-operate with the Customer and provide reasonable assistance to the Customer in any investigations of, or enquiries into, or any assessment of, or making any determination in relation to, the Suspected Data Breach or the Data Breach (as the context requires) by the Customer, or by a regulator or law enforcement agency (including without limitation the Privacy Commissioner and the Energy and Water Ombudsman Victoria), at its own expense.
- 10. Intellectual property**
- 10.1 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.
- 10.2 To the extent that any intellectual property used or owned by the Supplier is incorporated into the Goods, Services or other deliverables supplied under an Order, the Supplier grants the Customer a perpetual, irrevocable, royalty-free, non-exclusive licence to use that intellectual property, and to allow third parties to use such intellectual property on behalf of, and for the benefit of, the Customer for the Customer's business purposes.

- 11. 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.
- 12. Termination**
- 12.1 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 Goods and/or Services provided by the Supplier are not in accordance with the Order, or are defective in quality, workmanship or material or the Supplier has breached any material provision of the Order (including the provisions under clause 16).
- 12.2 Despite 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.
- 12.3 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 that have been provided in accordance with the Order up to the date of termination.
- 12.4 Termination does not affect any pre-existing rights or obligations or either the Supplier or the Customer.
- 13. Insurance**
- 13.1 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 liability insurance for the period of the Order with a level of cover per occurrence of \$20 million and product liability insurance for the period of the Order with a level of cover of \$20 million per occurrence and in the aggregate.
- 13.2 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:
- public liability insurance for the period of the Order with a level of cover per occurrence of \$20 million and product liability insurance for the period of the Order with a level of cover of \$20 million per occurrence and in the aggregate; and
 - 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 \$5 million.
- 13.3 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 13.2.
- 13.4 The Supplier must provide certificates of currency to demonstrate the Supplier's compliance with this clause 13 on request by the Customer.
- 14. 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.
- 15. Disputes**
Any dispute between the parties concerning an Order will be dealt with as follows:
- the parties must refer the dispute to its representatives who must together attempt to resolve the dispute;
 - if the dispute is not resolved under clause 15(a) within 3 weeks after such referral, the parties must refer the dispute to their respective managing directors or their agreed appointees; and
 - if the dispute is not resolved under clause 15(b) within 2 weeks, the parties must appoint a mediator by agreement (failing agreement, the mediator will be nominated by the President of the Law Institute of Victoria). The matters in dispute must then be promptly referred by the parties to the mediator for determination. The cost of the mediator will be borne by the parties in accordance with the mediator's determination.
- 16. Modern Slavery**
- 16.1 The Supplier warrants that it does not and covenants that it will not:
- engage in any form of Modern Slavery; and
 - engage a Tier 1 Supplier which in any way engages in any form of Modern Slavery.
- 16.2 The Supplier will, whenever requested by the Customer:
- disclose all entities in its Supply Chain relevant to the supply of the Goods and/or Services to the Customer; and
 - provide a written statement confirming that it is not in any way involved in any form of Modern Slavery.
- 16.3 The Supplier must identify, assess and immediately disclose to the Customer any actual or potential occurrence of Modern Slavery with which the Supplier may be involved or associated, either through its own operations or as a result of its Business Relationships.
- 16.4 In the event the Supplier identifies an occurrence or risk of Modern Slavery in its own operations or within its Supply Chains, it will immediately take reasonable steps to rectify the occurrence or mitigate the risk.
- 16.5 The Supplier will take all reasonable steps to ensure that any person who believes they have been a victim of Modern Slavery within the Supplier's operations or Supply Chain has the right to make a complaint and have that grievance addressed.
- 17. 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.
- 18. 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.
- 19. PPSA**
- 19.1 If any transaction contemplated by an Order gives rise to a security interest for the Customer under the PPSA then this clause 19 applies.
- 19.2 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.
- 19.3 To the extent permitted by the PPSA:
- 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;
 - the Supplier waives its right to receive each notice which section 157(3) permits to be waived;
 - 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.
- 19.4 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.
- 19.5 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.
- 20. 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.