

# CS ENERGY LIMITED PURCHASE CONDITIONS

(September 2008)

## 1. DEFINITIONS

In these Conditions:-

**'Agreement'** means the agreement between CSE and the Supplier for the supply of the Goods and comprises the relevant Purchase Order, the Conditions and any other documents referred to in the Purchase Order;

**'Conditions'** means these Purchase Conditions;

**'CSE'** means CS Energy Limited;

**'Force Majeure'** means circumstances including but not limited to the following which are deemed to be outside a party's control, such as perils of the sea, strikes, lockouts, Acts of God, war or warlike measures whether threatened, declared or anticipated, or the outbreak of hostilities between nations or countries, trade sanctions or Government directives, failure by CSE to acquire any necessary licences, explosions, embargoes, fire, flood, drought, riot, sabotage or accident;

**'General Site Conditions'** means the CS Energy general site conditions for each site (as applicable) attached in the Memorandum of Understanding, (and as amended from time to time by CS Energy and notified to the Supplier).

**'Goods'** means the goods described in a Purchase Order;

**'Law'** means any act, regulation, statute, by-law, ordinance, order or Proclamation whether Federal State or Local;

**'Price'** means the price for the Goods payable by CSE and stated in the Purchase Order;

**'Purchase Order'** means a document described as such provided by CSE to the Supplier authorising the Supplier to supply the Goods to CSE;

**'Quotation'** means a quotation provided by the Supplier to CSE for the supply of the Goods;

**'Specification'** means the specification for the Goods contained in the relevant Purchase Order together with any measurements, performance data, plans, drawings or other information either referred to in the Purchase Order or contained in the relevant Quotation or any catalogues, brochures or descriptive literature produced by the Supplier;

**'Supplier'** means the party who will supply the Goods to CSE named as supplier in a Purchase Order;

**'Warranties'** means the Supplier's warranties set out in clause 8;

## 2. FORMATION OF AGREEMENT

2.1 The delivery of a Purchase Order by CSE to the Supplier constitutes an offer by CSE to acquire the Goods described in that Purchase Order from the Supplier on the terms contained in that Purchase Order and these Conditions.

2.2 An Agreement for the purchase of Goods is formed between CSE and the Supplier when the Supplier:-

(a) confirms acceptance of the Purchase Order or informs CSE either in writing or verbally that the Goods will be supplied or otherwise communicates with CSE in any way which confirms or implies acceptance or;

(b) delivers the Goods to CSE.

2.3 No other conditions notified by the Supplier to CSE either verbally or in writing or in any other way prior to or subsequent to the delivery of a Purchase Order will have any application to or form part of this Agreement unless and until specifically accepted in writing by an authorised officer of CSE.

## 3. SPECIFICATION OF GOODS

The Supplier will ensure that the Goods delivered to CSE:-

(a) strictly comply with the Specification and the Warranties; and

(b) are in accordance with any and all relevant Laws in force at the date of delivery.

## 4. PRICE

4.1 The Price is fixed and not subject to rise and fall or any other adjustment.

4.2 The Price is the maximum amount payable by CSE to the Supplier for the Goods and includes:

(a) all necessary packaging and delivery costs;

(b) all GST, duty, excise, sales or other taxes (excluding income tax); and

(c) all unloading and installation costs (where stipulated in the Purchase Order).

## 5. DELIVERY OF GOODS

5.1 The Supplier will deliver the Goods to the place nominated in the relevant Purchase Order by the date stipulated on that Purchase Order. All deliveries will be made within CSE's normal working hours as notified by CSE to the Supplier.

5.2 CSE will be responsible for unloading the Goods unless the Goods (including packaging) weigh more than 1 tonne or are shipped on pallets exceeding the Australian Standard pallet size (whereupon the Supplier will unload the Goods) or unless otherwise stipulated in the relevant Purchase Order.

5.3 The Supplier will notify CSE of its unloading requirements within a reasonable time prior to delivery.

5.4 The Supplier will provide with each delivery full documentation identifying the contents of each package delivered and each package and each delivery document will be endorsed with the number of the relevant Purchase Order.

5.5 Failure by the Supplier to deliver the Goods by the date and time stipulated on the relevant Purchase Order or in accordance with the requirements of this clause will be a substantial breach of this Agreement entitling CSE to reject the Goods and terminate the Agreement.

5.6 Where packing is to be returnable, the Supplier shall so stipulate on the relevant Quotation and advise the amount of any deposit charges. All returnable packing shall be clearly marked as such, bear a return address and will be returned freight forward at CSE's convenience by a transporter selected by CSE unless otherwise agreed.

5.7 CSE may inspect and test the Goods at any time after delivery. Where CSE considers that the Goods are defective or do not comply with the Specification or the Warranties, they will be rejected and the Supplier notified of their rejection and the reasons. If required by CSE, the Supplier will forthwith replace the rejected Goods with Goods which comply with this Agreement. All rejected Goods are held by CSE at the Supplier's risk.

## 6. PROPERTY AND RISK IN GOODS

6.1 Where the Goods are supplied from within Australia:-

(a) D.D.P (Delivery Duty Paid) - property and risk in the Goods passes to CSE at the point of delivery into CSE's Stores, immediately prior to offloading;

(b) F.O.T. (Free on transport) - as in 6.1 (a) except where CSE contracts directly with the transporter, in which case property and risk in the Goods shall pass to CSE immediately after the Goods have been loaded onto the transporter's vehicle; or

(c) where nominated accordingly by CSE, risk in the Goods passes to CSE upon unloading of the Goods whereas property in the Goods passes to CSE upon payment being made to the Supplier.

6.2 Where the Goods are imported:-

(a) DDP - as in 6.1 (a);

(b) F.O.B (Free On Board Port of Dispatch) - provided that the Supplier has given adequate written notice to enable CSE to insure the Goods for the whole of the transit period, property and risk passes to CSE immediately after the Goods have been loaded on board ship, aircraft etc.;

- (c) C.I.F. (Carriage, Insurance Freight Port of Entry) - provided that the Supplier has given -
- (i) adequate written notice to enable CSE to insure the Goods for the whole of the transit period after offloading at the Port of Entry; and
  - (ii) (unless otherwise agreed) 3 copies of 'Clean on board ocean Bills of Lading', with commercial invoices, packing lists and certificates of origin,

property and risk will pass to CSE immediately after offloading at the Port of Entry.

- 6.3 If the Goods are lost or damaged whilst at the Supplier's risk, the Supplier will with all due diligence either replace the Goods or arrange repairs, whichever is acceptable to CSE.

## 7. TERMS OF PAYMENT

- 7.1 CSE will not be liable to pay the Price unless:-

- (a) the Goods strictly comply with the requirements of this Agreement; and
- (b) the Supplier has provided to CSE a fully detailed invoice containing -
  - (i) an adequate description of the Goods;
  - (ii) particulars of the date and time of delivery of the Goods; and
  - (iii) a signature of an authorised representative of CSE acknowledging delivery;

and

- (c) all documentation and other material required by this Agreement or any Law to be provided by the Supplier has been provided, including but not limited to MSDS.

- 7.2 Subject to clause 7.1, CSE will pay the Price to the Supplier within 30 days of receipt of the material referred to in clause 7.1(b) and (c) unless otherwise agreed or stipulated in the relevant Purchase Order.

- 7.3 The Contractor must quote the Purchase Order number in the Tax Invoice(s) submitted to effect payment in accordance with payment terms. Non-inclusion of the Purchase Order number in the Tax Invoice(s) may delay the processing of payment for the goods.

## 8. WARRANTIES

The Supplier warrants to CSE in relation to the Goods as follows:-

- (a) the Goods are suitable for the needs of CSE as disclosed to the Supplier prior to delivery of the Quotation and, if applicable, as amended and disclosed to the Supplier prior to the issue of the Purchase Order;
- (b) the Goods incorporate only proven and reliable technology which complies with all Laws and any relevant Australian Standards;
- (c) the Supplier has good title to and the right to use free of interference or claim all of the intellectual property comprised in the Goods and CSE will be entitled and licensed to use such intellectual property and all such technologies in its own right in respect of the Goods free of claim or payment;
- (d) the Supplier will carry out the manufacture and (where required) the installation and commissioning of the Goods in a good, proper and workmanlike manner and to a standard of professional care, skill, judgment and diligence expected of a supplier experienced in carrying out such work;
- (e) any supplies and materials incorporated in the Goods will comprise the best available material suitable for purpose and will be of good and merchantable quality free from latent defects;
- (f) the Goods are of merchantable quality and are free from defects in design, materials and workmanship;
- (g) the Goods are fit for the purposes communicated by CSE to the Supplier prior to the date of the Purchase Order or, if no such purpose is communicated, for the purposes for which goods of that type are usually acquired and otherwise correspond to the description given in the relevant Quotation and the Specification; and

- (h) the Goods are free from encumbrance, the Supplier has the right to sell the Goods to CSE and CSE will enjoy quiet possession of the Goods.

## 9. INDEMNITIES

- 9.1 The Supplier indemnifies and keeps indemnified CSE for, from or against all liabilities, proceedings, penalties (whether civil or criminal (except where to recover the same is unlawful or renders any part of this clause void for public policy reasons)), fines or other sanctions, judgments, damages, losses, claims, costs and expenses whatsoever and howsoever arising from or connected with the supply, installation or commissioning of the Goods or from or connected with any breach of this Agreement by the Supplier (including, without limitation, any breach of the Warranties or any Law) (including also reasonable legal costs and the reasonable costs of other advisers) which may be suffered or incurred at any time directly or indirectly by CSE or which may be suffered, incurred, made or claimed at any time directly or indirectly by, to or against the Supplier.

- 9.2 The indemnities and assumptions of liability contained in this clause and elsewhere in this Agreement will continue in full force and effect notwithstanding termination of this Agreement whether by effluxion of time or otherwise.

## 10. VARIATIONS

- 10.1 The Supplier will not vary the Goods or any part of the Goods without the written consent of CSE.
- 10.2 CSE may at any time direct the Supplier to vary the number, type, or composition of the Goods or supply different Goods and to the extent that the Supplier can reasonably comply with that direction, it will do so.
- 10.3 The price and other terms of the variation will be agreed between the parties.
- 10.4 Unless otherwise directed by CSE, after receiving a variation direction under clause 10.2, the Supplier will not deliver the Goods or the varied Goods to CSE until the terms of the variation have been agreed.

## 11. CANCELLATION

- 11.1 CSE may cancel delivery of the Goods at any time by notice in writing to the Supplier.
- 11.2 Where CSE cancels delivery otherwise than as a result of the breach of the Supplier or as a result of Force Majeure, CSE will pay to the Supplier all costs necessarily and reasonably incurred by the Supplier in performing its obligations under this Agreement which the Supplier is legally liable to pay up to the date of termination, provided however that CSE is not liable to compensate the Supplier for any loss of profit resulting from such termination.
- 11.3 The Supplier will use all reasonable endeavours to mitigate its loss.

## 12. FORCE MAJEURE

- 12.1 Where a Party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligations under the Agreement and that Party:
- (a) gives the other Party prompt notice and reasonable particulars of that Force Majeure;
  - (b) uses all possible diligence to remove and mitigate the effect of Force Majeure; and
  - (c) has not caused or contributed to the Force Majeure, then that obligation is suspended so far as it is affected by Force Majeure during the continuance thereof.
- 12.2 Any costs, losses or savings due to Force Majeure including any costs, losses or savings caused by any frustration of the contract due to Force Majeure will be borne, incurred or retained as the case may be by the Party incurring or receiving the same.
- 12.3 Where the event of Force Majeure continues for a period exceeding 60 days, CSE may, in its sole discretion, terminate this Agreement without any further liability to the Supplier.

## 13. TERMINATION

- 13.1 CSE may terminate this Agreement and withhold any amounts otherwise due under the Agreement, if:
- (a) the Supplier becomes insolvent or unable to meet its debts as and when they fall due or is adjudicated a bankrupt, or has a receiver,

receiver and manager or similar official appointed over any of its assets, or makes an assignment for benefit of creditors, or files a petition for an arrangement, composition, or compromise with its creditors under any applicable laws, or becomes externally administered, or has a trustee or other officer appointed to take charge of its assets; or

- (b) the Supplier is in substantial breach of any provision of the Agreement or fails to substantially perform any of its obligations under it.

13.2 If the Supplier's engagement under the Agreement is terminated under clause 13.1 the Supplier will be liable for and indemnifies CSE against:

- (a) any costs or expenses incurred by CSE in engaging others to provide the same or similar Goods which exceed the Price; and
- (b) any other losses suffered by CSE as a result of the termination.

13.3 The procedure provided in this clause 13 for termination is concurrent with and in addition to and without prejudice to, and not in lieu of or in substitution for, any other rights or remedies at law or in equity which CSE may have for the enforcement of its rights under the Agreement and its remedies for any default by the Supplier of the covenants, obligations or conditions of the Agreement.

#### **14. QUALITY ASSURANCE**

The Supplier must:

- (a) comply with any of CSE's quality assurance requirements notified to the Supplier in the Purchase Order; and
- (b) be quality assured and maintain its quality assurance certification for the duration of the Agreement.

#### **15. ACCESS TO SITE**

15.1 The Supplier must ensure that it, and must procure that its carrier or delivery agent and all of their employees and agents, comply with CSE's requirements and directions, including the requirements stated in the General Site Conditions, in relation to entry to CSE's premises, security, safety, environmental and co-operation with other contractors and personnel whilst on CSE's premises.

#### **16. GOODS AND SERVICES TAX**

16.1 For the purposes of this clause, the terms 'GST', 'Register', 'Supply', 'Supplier', 'Taxable Supply', 'Tax Invoice', and 'Value' have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* as amended.

16.2 If any Supply made under or in connection with this Agreement is a Taxable Supply then in addition to the Price, CS Energy shall pay the amount of GST in respect of that Supply to the Supplier where the GST is calculated in accordance with the *A New Tax System (Goods and Services Tax) Act, 1999 (as amended)* and on the basis the Price is the Value of the Taxable Supply.

16.3 The parties agree the Price payable under this Agreement is exclusive of GST.

16.4 Subject to Clause 7.1, CS Energy is not required to pay the Price to the Supplier until the later of:

- (a) 30 days after the receipt by CSE of a Tax Invoice; or
- (b) the date for payment under clause 7.2.

16.5 The Supplier warrants that:

- (a) the Supplier is Registered; and
- (b) each Supply made by the Supplier under this Agreement is a Taxable Supply.

#### **17. GENERAL**

17.1 This Agreement binds and benefits each party and their respective successors, assigns and legal personal representatives.

17.2 No variation to this Agreement shall be binding on the parties unless agreed in writing.

17.3 Each party must at its own cost do all things reasonably to give effect to this Agreement.

17.4 This Agreement supersedes any and all prior (written or oral) agreements, arrangements, negotiations, discussions or understandings between the parties.

17.5 No oral explanation or information provided by any party to another party is to:

- (a) affect the meaning or interpretation of this Agreement; or
- (b) constitute any collateral agreement, warranty or understanding between any of the parties.

17.6 A notice or other communication given under the Agreement must be in writing and either hand delivered, sent by postage prepaid or sent by facsimile to the address or facsimile number of the parties specified herein.

17.7 The Supplier may not assign nor purport to assign this Agreement or any right under this Agreement without the prior written consent of CSE which may be withheld absolutely.

17.8 This Agreement constitutes the entire agreement of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it.

17.9 The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.

17.10 The waiver by any party of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.

17.11 If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement and does not affect the validity, operation or enforceability of any other provision of this Agreement.

17.12 Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of this Agreement, and all over agreements and matters referred to in this Agreement.

17.13 The law of this Agreement is the law of Queensland. The parties irrevocably and unconditionally submit themselves to the exclusive jurisdiction of the courts of Queensland.