

CS ENERGY LIMITED

PURCHASE CONDITIONS

1. DEFINITIONS

In these Conditions:

'Agreement' means the agreement between CS Energy 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.

'CS Energy's Representative' means the person identified as CS Energy's Representative for the purposes of this Agreement.

'Force Majeure' means circumstances, including but not limited to the following, which are deemed to be outside a party's control: perils of the sea; acts of God; war or warlike measures whether threatened, declared or anticipated; the outbreak of hostilities between nations or countries; trade sanctions or Government directives; failure by CS Energy to acquire any necessary licenses; explosions; riot, strike or lockout (where the riot, strike or lockout is not initiated or caused by the Contractor or its Personnel).

'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.

'Personnel' means directors, officers, employees, sub-contractors, sub-consultants and agents.

'Price' means the price for the Goods payable by CS Energy and stated in the Purchase Order.

'Purchase Order' means a document described as such provided by CS Energy to the Supplier authorising the Supplier to supply the Goods to CS Energy.

'Quotation' means a quotation provided by the Supplier to CS Energy for the supply of the Goods.

'Site Conditions' means the CS Energy Site Conditions as in force from time to time, available from the CS Energy website, or alternatively, on request from the CS Energy's Representative.

'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 CS Energy 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 CS Energy to the Supplier constitutes an offer by CS Energy 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 CS Energy and the Supplier when the Supplier:

- (a) confirms acceptance of the Purchase Order or informs CS Energy in writing that the Goods will be supplied; or
- (b) delivers the Goods to CS Energy.

2.3 No other conditions notified by the Supplier to CS Energy 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 CS Energy's Representative.

3. SPECIFICATION OF GOODS

The Supplier will ensure that the Goods delivered to CS Energy:

- (a) strictly comply with the Agreement, including but not limited to the Specification and the Warranties; and
- (b) are in accordance with 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 CS Energy 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 on or before the date stipulated on that Purchase Order. All deliveries will be made within CS Energy's normal working hours as notified by CS Energy to the Supplier.

5.2 CS Energy 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 CS Energy 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 CS Energy 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 CS Energy's convenience by a transporter selected by CS Energy unless otherwise agreed.

5.7 CS Energy may inspect and test the Goods at any time after delivery. Where CS Energy 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 CS Energy, the Supplier will forthwith replace the rejected Goods with Goods which comply with this Agreement. All rejected Goods must be promptly removed from the place of delivery by the Supplier, and in the interim, all rejected Goods are held by CS Energy at the Supplier's risk.

6. PROPERTY AND RISK IN GOODS

6.1 Where the Goods are supplied from within Australia:

- (a) Delivery Duty Paid (DDP) – property and risk in the Goods passes to CS Energy at the point of delivery into CS Energy's Stores;
- (b) Free Carrier (FCA) –; the Supplier's obligation is to hand over the Goods, cleared for export, into the charge of the carrier named by CS Energy at the named place or point. If no precise point is indicated by CS Energy, the Supplier may choose within the place or range stipulated where the carrier shall take the goods into his charge. When the Supplier's assistance is required in making the contract with the carrier the Supplier may act at CS Energy's risk and expense; or
- (c) where nominated accordingly by CS Energy, risk in the Goods passes to CS Energy upon unloading of the Goods whereas property in the Goods passes to CS Energy upon payment being made to the Supplier.

6.2 Where the Goods are imported:

- (a) DDP - as in 6.1(a);
- (b) Free On Board Port of Dispatch (**FOB**) – provided that the Supplier has given adequate written notice to enable CS Energy to insure the Goods for the whole of the transit period, property and risk passes to CS Energy immediately after the Goods have been loaded on board ship, aircraft etc.;
- (c) Carriage, Insurance Freight Port of Entry (**CIF**) – provided that the Supplier has given:
 - (i) adequate written notice to enable CS Energy to insure the Goods for the whole of the transit period after offloading at the Port of Entry; and
 - (ii) (unless otherwise agreed) three (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 CS Energy 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 CS Energy.

7. TERMS OF PAYMENT

7.1 CS Energy 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 CS Energy 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 CS Energy 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, the Price will be payable by CS Energy to the Supplier thirty (30) days after the later of:

- (a) receipt of an invoice in accordance with clause 7.1(b) and (c); and
- (b) delivery of the goods in accordance with clause 5, 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 has given the following warranties to CS Energy which are accepted by CS Energy:

- (a) the Goods are fit for the purposes communicated by CS Energy 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;
- (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 CS Energy 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 (including latent defects) in design, materials and workmanship; and
- (g) the Goods are free from encumbrance, the Supplier has the right to sell the Goods to CS Energy and CS Energy will enjoy quiet possession of the Goods.

9. INDEMNITIES

9.1 Subject to clause 9.3, the Supplier shall indemnify CS Energy from and against any and all claims, demands, suits, liabilities, causes of action, costs, fines, losses, expenses, damages or penalties, including, without limitation court costs and reasonable legal fees, in respect of injuries (personal or bodily) to any person, or property damage to any property, to the extent that it arises or results from, or is caused by:

- (a) The Supplier;
- (b) Defective goods; or
- (c) Any failure by the Supplier to comply with the provisions of any Law or this Agreement.

9.2 The Supplier agrees to extend the benefit of the indemnity in clause 9.1 to CS Energy’s officers, directors, employees, agents, consultants and representatives.

9.3 The Supplier’s liability in relation to property damage under clause 9.1 is limited to \$10 million unless otherwise specified in the Purchase Order.

9.4 Neither party will be liable to the other party for loss of profits or revenue or for any special, indirect or consequential loss sustained by that other party.

9.5 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. INSURANCE

10.1 Unless otherwise stated in the Purchase Order and prior to the Supplier commencing the supply of the goods, the Supplier will, and will ensure any sub-contractors will, at its/their own expense, procure and maintain:

- (a) workers compensation insurance as required by law; and
- (b) product liability insurance in respect of the products being supplied,

and will provide evidence of such insurances being effected whenever required by CS Energy’s Representative.

11. VARIATIONS

11.1 The Supplier will not vary the Goods or any part of the Goods without the written consent of CS Energy.

11.2 CS Energy 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.

11.3 The price and other terms of the variation will be agreed between the parties.

11.4 Unless otherwise directed by CS Energy, after receiving a variation direction under clause 11.2, the Supplier will not deliver the Goods or the varied Goods to CS Energy until the terms of the variation have been agreed.

12. CANCELLATION

12.1 CS Energy may cancel delivery of the Goods at any time by notice in writing to the Supplier.

12.2 Where CS Energy cancels delivery otherwise than as a result of the breach of the Supplier or as a result of Force Majeure, CS Energy 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 CS Energy is not liable to compensate the Supplier for any loss of profit resulting from such termination.

12.3 The Supplier will use all reasonable endeavours to mitigate its loss.

13. FORCE MAJEURE

13.1 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.

13.2 Any costs, losses or savings due to Force Majeure including any costs, losses or savings caused by any frustration of this Agreement due to Force Majeure will be borne, incurred or retained as the case may be by the Party incurring or receiving the same.

13.3 Where an event of Force Majeure continues for a period exceeding thirty (30) days, CS Energy may, in its sole discretion, terminate this Agreement without any further liability to the Supplier.

14. TERMINATION

14.1 CS Energy 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.

14.2 If the Supplier's engagement under the Agreement is terminated under clause 14.1 the Supplier will be liable for and indemnifies CS Energy against:

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

14.3 The procedure provided in this clause 14 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 CS Energy 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.

15. QUALITY ASSURANCE

The Supplier must:

- (a) comply with any of CS Energy'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.

16. ACCESS TO CS ENERGY'S PREMISES

16.1 The Supplier must ensure that it, and its carrier or delivery agent/s and all of the carrier or delivery agent/s employees and agents, comply with CS Energy's requirements and directions, including the requirements stated in the Site Conditions, whilst on CS Energy's premises.

17. GOODS AND SERVICES TAX

17.1 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* (Cth) (as amended).

17.2 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* (Cth) (as amended) and on the basis the Price is the Value of the Taxably Supply.

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

17.4 The Supplier warrants that:

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

18. GENERAL

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

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

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

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

18.5 No oral explanation or information provided by any party to this Agreement to another party to this Agreement 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.

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

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

18.8 Unless expressly agreed otherwise, in the event of any inconsistency between:

- (a) the Quotation and this Agreement, this Agreement will prevail to the extent of the inconsistency;
- (b) this Agreement and the Site Conditions, the Site Conditions will prevail to the extent of the inconsistency;
- (c) these Conditions and the Purchase Order, the Purchase Order will prevail to the extent of the inconsistency; and
- (d) this Agreement and a contract referenced by this Agreement, the contract referenced by the Agreement will prevail to the extent of the inconsistency.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 Unless expressly agreed otherwise, in the event of any inconsistency between:

- (a) the Offer and this Agreement, this Agreement will prevail to the extent of the inconsistency;
- (b) this Agreement and the Site Conditions, the Site Conditions will prevail to the extent of the inconsistency;
- (c) these Conditions and the Purchase Order, the Purchase Order will prevail to the extent of the inconsistency; and
- (d) this Agreement and a contract referenced by this Agreement, the contract referenced by the Agreement will prevail to the extent of the inconsistency.

18.14 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.