

# CS ENERGY LIMITED

## SERVICE CONDITIONS

### 1. DEFINITIONS

In these Conditions:

**'Agreement'** means the agreement between CS Energy and the Contractor for the provision of Services and comprises the relevant Service Order, these Conditions and any other documents referred to in the Service Order.

**'Completion'** means final completion of the performance of the Services.

**'Completion Date'** means the date for completion of the Services, as specified in the Service Order.

**'Commencement Date'** means the date for commencement of the Services, as specified in the Service Order.

**'Conditions'** mean these Service 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).

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

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

**'Price'** means the price for the supply of the Services stated in or calculated in accordance with the Service Order.

**'Offer'** means the offer or quotation for the supply of the Services obtained from the Contractor by CS Energy.

**'Reimbursable Expenses'** means the expenses listed as 'Reimbursable Expenses' in the Service Order or otherwise as approved in writing by CS Energy's Representative prior to the expense being incurred.

**'Services'** mean the services to be performed and the materials to be provided by the Contractor as detailed in the Service Order.

**'Service Order'** means a document described as such provided by CS Energy's Representative to the Contractor engaging the Contractor to provide the Services to CS Energy subject to these Conditions and any special conditions stated in the Service Order.

**'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.

**'Contractor'** means the Contractor stated on the Offer or the Service Order, and the Contractor's Personnel.

**'Work Program'** means a written document, which forms part of the Agreement, whether prepared by CS Energy or the Contractor setting out the chronological order for performance of the Services according to an assigned time schedule.

### 2. FORMATION OF THE AGREEMENT

2.1 The delivery of a Service Order by CS Energy to the Contractor constitutes an offer by CS Energy to engage the Contractor to provide the Services described in that Service Order on the terms contained in that Service Order and these Conditions.

2.2 The Agreement for the provision of the Services is formed between CS Energy and the Contractor when the Contractor:

- (a) informs CS Energy in writing that the Services will be provided; or
- (b) provides the Services to CS Energy.

2.3 No other conditions notified by the Contractor to CS Energy either verbally or in writing or in any other way prior to or subsequent to the delivery of a Service 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. ENGAGEMENT

3.1 The Contractor will ensure that the Services are:

- (a) provided in a professional manner;
- (b) performed in accordance with this Agreement and all relevant Laws in force at the date of performance of the Services; and
- (c) completed by the Completion Date.

### 4. TIME FOR COMPLETION

4.1 CS Energy may request that the Contractor submit to CS Energy's Representative:

- (a) written notification of the methodology the Contractor intends to adopt in its performance of the Services; and
- (b) a Work Program for performance of the Services, which shows how the Contractor will complete the Services by the Completion Date,

before commencing performance of the Services.

4.2 CS Energy's Representative may approve the methodology and Work Program, or may require changes. The Contractor will comply with the approved or amended methodology and Work Program in completing the Services and will not depart from them without the written consent of CS Energy's Representative.

4.3 The Completion Date will only be extended:

- (a) where the Contractor is unable to complete the Services by the Completion Date due to: an act, default or omission of CS Energy;
- (b) in accordance with clause 15; or
- (c) if otherwise agreed in writing by CS Energy's Representative.

### 5. INTELLECTUAL PROPERTY

5.1 All rights to any intellectual property created by the Contractor in performing the Services shall, upon creation of the intellectual property, vest in CS Energy and CS Energy grants the Contractor a license to use the intellectual property for the purpose of performing the Services.

5.2 Nothing in this Agreement prevents CS Energy from transferring a license established in accordance with the above clause 5.1 to another party at a future point in time.

5.3 The Contractor shall do everything necessary to protect CS Energy's intellectual property, including any intellectual property created under the above clause 5.1.

5.4 Intellectual property in any items introduced by the Contractor for use in performing the Services remains with the Contractor and the Contractor grants to CS Energy an irrevocable license to use the intellectual property for the purpose of its operations.

5.5 Notwithstanding any provision of this Agreement, the Contractor indemnifies CS Energy against any claims made by a third party in respect of the use of any intellectual property for or in connection with any goods or Services supplied by the Contractor under this Agreement.

### 6. PRICE

6.1 Subject to clause 6.3, and clause 6.7, CS Energy will pay the undisputed amount of the Price to the Contractor no earlier than thirty (30) days after receipt of a Tax Invoice (as defined in clause 19) by CS Energy.

6.2 The Price is a fixed price not subject to rise and fall and includes all taxes, levies, duties and the like (excluding goods and services tax):

- (a) imposed on the supply, sale or use of the Services or any part of them; and / or
- (b) measured with reference to the price of the Services.

6.3 In the event that:

- (a) the Contractor is a foreign resident;
- (b) CS Energy believes, or has reasonable grounds to believe, that the Contractor is a foreign resident; or

- (c) the Contractor has a foreign address (including a payment address), and CS Energy does not have reasonable grounds to believe the Contractor is a resident;

then CS Energy will be entitled to withhold from the amount/s payable to the Contractor such amount as is required to be withheld for the purposes of compliance with Australian taxation Laws.

- 6.4 If the Contractor disputes that CS Energy should be entitled to withhold any amount under clause 6.3, then the Contractor must either provide CS Energy with a certified copy of:

- (a) the exemption the Contractor has obtained from the Commissioner of Taxation; or
- (b) such evidence (for example, a tax return) to verify to CS Energy that the Contractor is an Australian resident for the purposes of Australian taxation Laws.

- 6.5 Subject to clause 6.4, CS Energy will remit any amounts withheld under clause 6.3 to the Commissioner of Taxation or such other relevant government authority or agency, as required by Australian taxation Laws.

- 6.6 In addition to the Price, the Contractor is entitled to be paid for the Reimbursable Expenses; such payment is to be made at the same time as the Price is paid.

- 6.7 CS Energy will not be liable to pay the Price unless:

- (a) The Services strictly comply with the terms of this Agreement; and
- (b) The Contractor has provided to CS Energy a fully detailed invoice containing:
  - (i) A description of the Services;
  - (ii) Particulars of the date and time of carrying out of the Services; and
  - (iii) A signature of an authorised representative of CS Energy acknowledging the carrying out of the Services.

- 6.8 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 Services.

## **7. ACCESS TO PREMISES AND FACILITIES**

- 7.1 CS Energy will provide the Contractor with reasonable access to premises occupied or controlled by CS Energy, to enable the Contractor to perform the Services.

- 7.2 If the Services are not performed on a site occupied or controlled by CS Energy, the Contractor will provide CS Energy's Representative with access to any premises occupied by the Contractor to enable CS Energy to inspect and test the Services, or any part thereof.

## **8. WARRANTIES**

- 8.1 The Contractor has given the following warranties to CS Energy which are accepted by CS Energy:

- (a) the Services will comply with the Offer and this Agreement, and will meet CS Energy's requirements, as disclosed to the Contractor prior to the date of this Agreement subject to any amendments, in writing, and agreed by the parties prior to the Services being completed;
- (b) the Services will be carried out by competent, experienced, professional persons capable of properly and adequately performing their respective functions and duties;
- (c) all persons performing the Services on behalf of the Contractor will apply necessary and proper skill and judgement to the Services;
- (d) any materials, equipment, procedures, systems or methods used, prescribed, recommended or endorsed by the Contractor will be fit and suitable for their purpose and consistent with the stated requirements of CS Energy;
- (e) the Contractor has sufficient resources to maintain efficient and timely provision of the Services;
- (f) the Contractor has inspected any relevant premises of CS Energy and is familiar with the conditions of the relevant premises and accepts them for performance of the Services;

- (g) the Contractor has knowledge of all applicable Laws, business practices and standards which must be followed in performing the Services and will perform the Services in compliance with all applicable Laws, business practices and standards; and

- (h) all consents, and a non-exclusive, irrevocable, royalty free, transferable, paid up license for the use of any third party intellectual property have been obtained by the Contractor.

## **9. DEFECT RECTIFICATION**

- 9.1 Any defect or shortcoming in relation to any Services performed by the Contractor shall be rectified by the Contractor, at the Contractor's cost, when reasonably directed to do so by CS Energy's Representative.

- 9.2 CS Energy's Representative may direct the Contractor as to the dates by which the Contractor must commence and complete the rectification work.

- 9.3 If the rectification work ordered under clause 9.2 is not commenced or completed by the stated dates, CS Energy may, without prejudice to any other rights it may have, carry out or engage another party to carry out the rectification work, and the costs incurred by CS Energy shall be a debt due from the Contractor.

## **10. SET OFF**

- 10.1 CS Energy may set off from any moneys due to the Contractor under this Agreement, the amount of any debt or other liability of the Contractor to CS Energy on any account whatsoever and without prejudice to CS Energy's other rights in respect of the recovery of such amounts.

## **11. INDEMNITIES**

- 11.1 Subject to clause 11.3, the Contractor 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 is arises or results from, or is caused by:

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

- 11.2 The Contractor agrees to extend the benefit of the indemnity in clause 11.1 to CS Energy's Personnel.

- 11.3 The Contractor's liability in relation to property damage under clause 11.1 is limited to \$10 million, unless otherwise specified in the Purchase Order.

- 11.4 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.

- 11.5 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.

## **12. INSURANCE**

- 12.1 Unless otherwise stated in the Service Order and prior to the Contractor commencing performance of the Services, the Contractor will, and will ensure any sub-contractors will, at its/their own expense, procure and maintain:

- (a) workers compensation insurance as required by law;
- (b) public liability insurance in respect of accidents arising from an event occurring on the premises of CS Energy of not less than \$10 million; and
- (c) professional indemnity and product liability insurance (if applicable) in respect of the Services,

and will provide evidence of such insurances being effected upon request by CS Energy's Representative.

## **13. SAFETY AND ENVIRONMENTAL PLANS**

- 13.1 Unless the parties agree otherwise, the Contractor must, on request, provide CS Energy's Representative, with a copy of its health and safety plan and its environmental plan fourteen (14) days prior to the Commencement Date. Where no Commencement Date is specified, or the Commencement Date is specified but does not allow for the requisite fourteen (14) days, the Contractor must provide CS Energy's Representative with a

- copy of both plans immediately upon formation of this Agreement.
- 13.2 If in CS Energy's Representative's opinion (reasonably formed), a plan submitted under clause 13.1 by the Contractor is acceptable, CS Energy's Representative will accept the plan. Where there is a non-conformance, omission or deficiency of a plan submitted by the Contractor under clause 13.1, CS Energy's Representative will advise the Contractor of that non-conformance, omission and/or deficiency and the Contractor must within a reasonable period of time of being so advised, amend or revise its plan and re-submit it to CS Energy's Representative for acceptance.
- 13.3 Notwithstanding clauses 13.1 and 13.2, whenever the Contractor or its Personnel are on premises controlled by CS Energy, the Contractor must ensure that it and its Personnel comply with, CS Energy's requirements, directions, standards, systems, practices and policies, including the Site Conditions, as in force from time to time, in relation to:
- entry and security to CS Energy's premises;
  - safety at CS Energy's premises;
  - environmental management at CS Energy's premises;
  - co-operation with other contractors and Personnel; and
  - industrial relations matters affecting CS Energy's premises.
- 13.4 Without limiting clause 13.3, the Contractor and its Personnel must attend CS Energy's safety and environmental induction course and comply with directions given by CS Energy's Representative in relation to safety and the environment.
- 13.5 CS Energy may, in its sole discretion, deny the Contractor's Personnel who do not comply with the requirements of clauses 13.3 and 13.4, access to premises occupied or controlled by CS Energy.
- 14. HEALTH, SAFETY AND ENVIRONMENT INCIDENT MANAGEMENT**
- 14.1 The Contractor must read and understand the CS Energy Incident Management Procedure, which details the management of incidents, prior to commencing the Services.
- 14.2 The CS Energy Incident Management Procedure is available from CS Energy's website, or by request to CS Energy's Representative.
- 14.3 If a "category 3" or a "category 4" incident, as defined in the CS Energy Incident Management Procedure, (a significant health, safety or environmental incident) occurs resulting from, or involving the Contractor's Personnel, the Contractor undertakes and agrees that it will,
- immediately advise the CS Energy's Representative of the incident and where this is not possible notification must be within eight (8) hours of the incident occurring;
  - notify the appropriate statutory authority as required by the relevant Law and supply a copy of the notification to CS Energy within eight (8) hours of notifying that authority;
  - provide to CS Energy an incident report within twelve (12) working hours of reporting the incident, as provided in subclause (a) above; and
  - provide an investigation report and incident action plan within seven (7) working days from the date of the incident occurring.
- 14.4 CS Energy may amend the CS Energy Incident Management Procedure from time to time. CS Energy will notify the Contractor of any amendment which will significantly impact upon the Contractor's obligations under the Incident Management Procedure and this clause 14 and the Contractor will be deemed to have accepted the amendment (unless the Contractor disputes any aspect of the amendment within three (3) days of receipt of such notification) on proof of notification.
- 15. FORCE MAJEURE**
- 15.1 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:
- gives the other party prompt notice and reasonable particulars of that Force Majeure;
  - uses all possible diligence to remove and mitigate the effect of Force Majeure; and
  - 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.
- 15.2 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.
- 15.3 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 Contractor.
- 16. SUSPENSION, CANCELLATION & TERMINATION**
- 16.1 CS Energy may at any time, on giving seven (7) days (or other such reasonable lesser time if the duration of time for the performance of the Services is less than four (4) weeks) notice to the Contractor, terminate this Agreement.
- 16.2 CS Energy, by notice to the Contractor, may suspend the performance of the Services and/or terminate the Contractor's engagement under this Agreement (either with respect to all the Services or any portion of the Services), and withhold any amounts otherwise due under the Agreement, if:
- the Contractor 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 the benefit of creditors under any applicable Laws, or becomes externally administered, or has a trustee or other officer appointed to take charge of its assets; or
  - CS Energy determines that the Work Program is not being maintained or that the Contractor is refusing or failing to properly perform any Services; or
  - the Contractor is in material breach of any provision of the Agreement or fails to substantially perform any of its obligations under the Agreement.
- 16.3 Notwithstanding any other provision in this Agreement, if the Contractor's engagement under the Agreement is terminated under clause 16.2 the Contractor will be liable for and indemnifies CS Energy against:
- any costs or expenses incurred by CS Energy in engaging others to complete the Services which exceed the sum which would have been payable to the Contractor to complete the Services; and
  - any other losses suffered by CS Energy as a result of the termination.
- 16.4 Termination under this clause 16 is without prejudice to any other rights that CS Energy may have for the enforcement of its rights under the Agreement.
- 17. PAYMENT OF WORKERS & SUBCONTRACTORS**
- 17.1 Before making any payment to the Contractor, CS Energy may request the Contractor to provide a statutory declaration in the form prescribed by the *Oaths Act 1867* (Qld) as follows:
- "All employees engaged on the Services under this Agreement, in Australia, have been paid in full all amounts due to be paid on their behalf or due to them as wages and allowances or every kind required to be paid under statute, industrial award or industrial agreement, award of a Court or certified by a Court or an agreement approved by CS Energy and all claims for every description whatsoever (and whether for damage or injury to property or persons) arising out of the Agreement have been satisfied. All amounts which are due and payable to all subcontractors have been duly paid."
- 17.2 In addition to clause 17.1 above, CS Energy may require the Contractor to provide proof that all payments described in the statutory declaration referred to in clause 17.1 have been made.
- 18. AUDIT OF OPERATIONS**
- 18.1 CS Energy may conduct an audit of operations, information and records of the Contractor and its Personnel on seven (7) days written notice, to determine whether the Contractor and its Personnel have complied with the obligations in this Agreement. The Contractor must afford and must ensure its Personnel afford CS Energy such access to their operations, information and records as CS Energy reasonably requires for this purpose.

18.2 A failure to comply with the Contractor's obligations in clause 18.1 will amount to a breach entitling CS Energy to terminate the Agreement under clause 16.2.

## 19. GOODS AND SERVICES TAX

19.1 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) (**the Act**) and on the basis the Price is the Value of the Taxable Supply.

19.2 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 Supplier where the GST is calculated in accordance with the Act and on the basis the Price is the Value of the Taxable Supply.

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

19.4 The Supplier warrants that:

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

## 20. QUALITY ASSURANCE

20.1 The Contractor must:

- (a) comply with CS Energy's quality assurance requirements, notified to the Contractor in the Service Order; and
- (b) be quality assured and maintain its quality assurance certification for the duration of the Agreement.

## 21. CONFIDENTIALITY

21.1 This clause 21 applies to all information (whether of a scientific, engineering, industrial, mining, technical, business or financial nature or otherwise) in whatever form of or relating to CS Energy disclosed to the Contractor and its Personnel or that the Contractor and its Personnel have access to in the course of the performance of the Services and all documents provided to CS Energy in the performance of the Services deemed confidential by CS Energy or that a reasonable person would deem confidential. (**Confidential Information**).

21.2 Confidential Information does not include information, which the Contractor can establish (by written record):

- (a) is or becomes widely known in the public domain, except through disclosure contrary to this Agreement;
- (b) was already in the Contractor's possession when it was given to the Contractor and was not otherwise acquired from CS Energy; or
- (c) was lawfully received from another person having the unrestricted legal right to disclosure that information without requiring the maintenance of confidentiality.

21.3 The Contractor must ensure that its Personnel comply with the terms of this clause 21.

21.4 The Contractor and its Personnel must not:

- (a) disclose, directly or indirectly, any Confidential Information to any person without the prior written approval of CS Energy;
- (b) use or make a copy of any Confidential Information otherwise than for the purposes of this Agreement, and the Contractor must immediately notify CS Energy if the Contractor or its Personnel become aware of any unauthorised access to, or use or disclosure of, any Confidential Information.

21.5 The obligations in clause 21.4 do not apply to the Contractor where the Contractor is required by Law to disclose any Confidential Information and immediately gives notice to CS Energy of that requirement and discloses only that portion of Confidential Information, which the Contractor is legally required to disclose.

21.6 The Contractor, at the reasonable written request of CS Energy, is required to immediately deliver to CS Energy all Documents, including without limitation all copies (except that the Contractor may retain one copy of the Documents for its own records solely for the purposes of this Agreement) containing, recording or referring to the Confidential Information which are in the Contractor's possession, power or control, or (at CS Energy's

request) have such material deleted from its word processing machine and confirm such deletion promptly in writing.

21.7 This clause 21 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of obligations at Law or under any statute or trade profession custom or use.

## 22. DISPUTE RESOLUTION PROCEDURE

22.1 Unless a party to this Agreement has complied with this clause, that party may not commence court proceedings or arbitration concerning any dispute between the parties arising from the Agreement (whether during the term or after termination of this Agreement) except where that party seeks urgent interlocutory relief.

22.2 Where a dispute between the parties has arisen from this Agreement a party claiming that a dispute has arisen must notify the other party, specifying the nature of the dispute.

22.3 The parties will meet within ten (10) business days of receipt of a dispute notice to negotiate in the utmost good faith and endeavour to reach agreement concerning the matter in dispute.

22.4 If the matter in dispute is not resolved pursuant to clause 22.3 within twenty (20) Business Days of the date of the dispute notice is received, or such longer period as the parties may agree in writing, as evidence by signed statement given by each party, then either party may request an independent third party, approved by both parties be appointed for the purpose of resolving the dispute, failing agreement as appointed by the President of the Queensland Law Society.

22.5 The parties will submit to the independent third party, material particulars of the dispute and copies of any relevant documents within five (5) days of the independent third party's appointment. The parties acknowledge that the purpose of any exchange of documents or information or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties.

## 23. GENERAL

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

23.2 No variation to this Agreement shall be binding on the parties unless agreed in writing. The parties must agree to any variation in writing before commencement of the Services the subject of the variation.

23.3 Each party must at its own cost do all things reasonable to give effect to this Agreement, including but not limited to bearing its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of this Agreement, and all other agreements and matters referred to in this Agreement.

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

23.5 No oral explanation or information provided by a 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.

23.6 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.

23.7 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 provision of this Agreement.

23.8 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 Service Order, the Service 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.

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