

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless and except to the extent that the context otherwise indicates or requires: **NPS** means Northern Power Services Pty Ltd (ACN 070 148 953).

Background IP means with respect to both parties Intellectual Property owned by that party existing at the date the Order is made including any modifications made during the course of the Contract to such Background IP.

Business Day means a day that is not Saturday, Sunday, nor a public holiday in Darwin.

Confidential Information means any information of a confidential nature which relates to the business, affairs or activities of a party including information comprised in Intellectual Property Rights of any party, process or operation information, calculations or analysis, financial and business information and information of third parties which is required to be kept confidential.

Contract means the agreement between NPS and the Customer for the provision of the Goods and/or Services and includes the Quote, the Order and these terms and conditions.

Customer means the person identified as the customer on the Quote and includes the Customer's agents and assigns.

Goods means any goods supplied by NPS including any Goods manufactured or developed by NPS, or such other third-party Goods, plant, equipment, materials, supplies or items as specified in the Order and those Goods supplied or installed in the course of providing the Services.

Intellectual Property Rights means all and any rights in issued patents and patent applications, rights to inventions, design rights, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, moral rights, rights in Confidential Information (including know-how and trade secrets).

Order means a purchase order for Goods and/or Services placed by the Customer in response to a Quote and accepted by NPS in accordance with clause 0 and as varied in writing from time to time by the parties.

Quote means a written description of the Goods and/or Services to be provided, an estimate of NPS's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR means the 'Personal Property Security Register' established under section 147 of the PPSA.

Price or Prices means the price for the Goods and/or Services set out in the Quote.

Services means the services set out in the Order to be provided by NPS to the Customer in accordance with the Contract.

Site means the location where the Goods and/or Services are to be provided.

Agreement

Unless otherwise agreed between the parties in writing, all Goods and/or Services are supplied on the following terms and conditions:

- (i) the Quote;
 - (ii) these terms and conditions; and
 - (iii) the Order,
- (together the 'Contract').

If there is any conflict or inconsistency between the documents listed in clause 0, the documents will rank in order of precedent with the order in which they are listed in clause 0.

Each purchase order issued by the Customer in response to a Quote and accepted by NPS either in writing or by commencing work will be issue and accepted on these terms and conditions, to the exclusion of all other terms including any terms and conditions referenced or set out in any purchase order or other document issued by the Customer to NPS ('Order').

2. QUOTES AND ORDERING

Unless indicated otherwise by NPS in writing, all Prices set out in any Quote are based on the quantity of Goods and/or Services and the delivery timeframes set out in the Quote and will only be valid for thirty days from the date of the Quote.

If the Customer changes the time required for the delivery, volume or scope of Goods and/or Services required or places a purchase order more than thirty days after the date of the Quote, NPS reserves the right to vary its Prices.

3. PRICE AND PAYMENT

The Customer must pay the Price to NPS.

Unless otherwise set out in a Quote, NPS can elect to issue invoices:

- (i) monthly in arrears;
- (ii) upon completion of any stage of the Services; or
- (iii) upon completion of all the Services.

The Customer must pay the amounts show on any invoice rendered by NPS and provided to the Customer within 30 days from the date of the invoice or as otherwise agreed in writing between the parties.

4. DELIVERY, RISK AND TITLE

NPS agrees to provide the Goods and Services in accordance with the terms of the Contract and in consideration of payment of the Price by the Customer.

NPS will deliver the Goods to the Site. Risk of any loss or damage to the Goods passes to the Customer upon delivery to the Site.

Title in the Goods does not pass to the Customer until the Customer has made payment in full of all moneys owing by the Customer to NPS (whether in respect of money payable under a specific Contract or on any other account whatsoever). The Customer agrees that property and title in the Goods will not pass to the Customer, and NPS retains the legal and equitable title in those Goods supplied, until all monies owing by the Customer to NPS are paid to NPS.

Until payment in full has been made to NPS:

- (i) The Customer will hold the Goods in a fiduciary capacity for NPS.
- (ii) The Customer agrees that whilst the property and title in the Goods remains with NPS, NPS has the right, with or without prior notice to the Customer, to enter upon the Site (or any premises occupied by the Customer or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer where the Goods are located) to inspect the Goods and to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue.
- (iii) Where NPS exercises any power to enter premises under clause 4(ii), that entry will not give rise to any action of trespass or similar action on the part of the Customer against NPS or its employees, servants or agents.
- (iv) For the avoidance of doubt, NPS's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

The Customer acknowledges the Contract, and/or any transaction in connection with it, constitutes a security interest, and the Customer agrees to do all things reasonably necessary (including obtaining consents and signing and producing documents) which NPS requires for the purpose of:

- (v) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (vi) enabling NPS to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; or
- (vii) enabling NPS to exercise rights in connection with the security interest.

NPS is not required to give any notice under the PPSA (including a verification statement) unless the notice is required by the PPSA to be given even though the parties have waived the right to receive notice.

The variation or waiver or a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

The Customer must not:

- (viii) Create any security interest or lien over the personal property of NPS whatsoever other than the security interests granted in favour of NPS.
- (ix) Sell, lease or dispose of NPS's personal property or any interest in that property the Customer may have.
- (x) Give possession of NPS's personal property to another person except with the express prior written authority of NPS.
- (xi) Permit any of NPS's personal property to become an accession to or commingled with any asset that is not part of the Works or the Site.
- (xii) Change its name or relocate its principal place of business or place or registration without first giving NPS not less than 10 Business Days notice.

5. PROVISION OF SERVICES

NPS will provide suitably qualified, experienced and competent personnel to carry out the Services and related tasks in accordance with the Contract in a professional manner with due care and skill.

NPS will ensure the Services are provided in accordance with all applicable laws and regulations and general industry practice.

If an Order indicates that NPS is to provide the Services at the Site, then:

- (i) The Customer will at its own cost prepare the Site and provide NPS with reasonable access to the Site and other associated necessary facilities to allow NPS to perform its obligations under this Contract.
- (ii) The Customer will ensure that NPS's representatives attending the Site receive all necessary safety site induction and personal protection equipment (where appropriate).
- (iii) At its own cost, in a timely manner and so as to avoid any delay to NPS, the Customer will provide all information, approvals, permits, authorisations, licences, customs clearances, instructions, materials, civil works, reports, drawings, geotechnical and survey information, access and other things which may be required in relation to the performance of NPS's obligations and which are not expressly stated in the Quote to be NPS responsibility.

6. WARRANTIES

NPS warrants that all Services will be performed in a professional manner with due skill and care, using appropriately skilled and qualified personnel and in accordance with all applicable laws and regulations.

7. INTELLECTUAL PROPERTY

Each party will retain all Intellectual Property Rights in their respective Background IP. Subject to payment in full for the Goods and Services, NPS will grant the Customer a royalty free, non-exclusive, irrevocable and perpetual license to use NPS' Background IP necessary for the Customer to enjoy the benefit of the Goods and Services for the purposes of or in connection with Customer's business.

The Customer acknowledges that NPS retains ownership of the Intellectual Property Rights of NPS used or created under the Contract. NPS acknowledges that the Customer retains ownership of the Intellectual Property Rights of any Customer Background IP. To enable each party to perform their obligations under each Order and for the Customer to

enjoy the benefit of the Goods and Services for the purpose of or in connection with its business, each party grants to the other party a non-exclusive, royalty free, irrevocable and perpetual licence to use its Intellectual Property Rights for that purpose.

8. CONFIDENTIALITY

Each party agrees to hold in strict confidence all Confidential Information and not to disclose or permit or cause the disclosure of any Confidential Information to any person except and solely to the extent necessary for the performance of that party's obligations under the Contract, unless that party has first obtained the prior written consent of the other Party.

Clause 8 does not apply to:

- (i) information after it becomes generally available to the public other than as a result of the breach of this clause 8 or any other obligations of confidentiality imposed on a party; or
- (ii) the disclosure of information in order to comply with any applicable law or legally binding order of any court, government agency or recognised stock exchange, provided that prior to such disclosure the disclosing party gives notice to the other party with full particulars or the proposed disclosure.

9. LIMITATION OF LIABILITY

Notwithstanding any other term of the Contract, NPS's total liability under the Contract whether in contract, tort (including negligence) or otherwise arising out of NPS's performance of the Contract, will not exceed in the aggregate the Price actually paid to NPS pursuant to the Order giving rise to such liability.

10. TAXES

Unless otherwise stated in the Contract, all amounts referred to under or in connection with the Contract are exclusive of GST or any other value added or withholding taxes. In relation to any GST payable for a taxable supply (under GST Law) by a party, the recipient of the supply will pay the GST subject to the supplier providing a tax invoice (as defined under GST Law). Terms used in this clause 10 which are defined in the GST Act have the same meaning as in the GST Act.

11. TERMINATION

If the Customer fails to pay any sum due under the Contract by the due date, NPS may by notice, in addition to any other rights it may have, suspend supplying the Goods and Services until all overdue amounts are paid. The Customer will be liable to NPS for all expenses, including reasonable legal fees, relating to the collection of overdue amounts or the repossession or attempted repossession of any of NPS's property.

Either party may terminate the Contract by providing notice to the other party if any of the following events or circumstances occurs:

- (i) a party goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration (or the equivalent under the laws of another jurisdiction); or
- (ii) a party fails to remedy any breach of the Contract within the time frame specified in the written notice from the other party specifying details of the breach and requesting rectification of the same.

Any termination of the Contract will not affect any rights or obligations which by their nature continue beyond the effective date of termination or which have accrued to a party prior to termination.

12. DISPUTE RESOLUTION

The parties will attempt in good faith to resolve all disputes, disagreements or claims between the parties relating to the Contract. The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of the Customer and NPS.

If the parties cannot resolve the dispute themselves they may agree to appoint an expert or mediator to help them resolve the dispute. In such event both parties agree to jointly bear the costs of such mediator or expert and be bound by the determination of such person.

In the event the parties cannot resolve the dispute and:

- (i) the parties cannot agree upon a mediator or expert; or
- (ii) a mediator or expert has been appointed but resolution has not been reached within six weeks of appointment of the mediator or expert,

then either party may initiate legal proceedings.

13. GENERAL

13.1 No Partnership

Nothing contained or implied in the Contract will create a relationship of partnership or agency between the parties and neither party has any authority to bind the other party to any obligations.

13.2 Force Majeure

A party will not be liable to the other party if performance of its obligations under the Contract is delayed, impeded or prevented by any act or event beyond the control of such party, whether foreseen or not, which delays, interrupts or prevents such party from performing its obligations under the Contract (Force Majeure).

If NPS is delayed in the supply of Goods and Services due to Force Majeure which continues for more than one month, either party may terminate the Order by written notice to the other party. For the purposes of this clause 13.2 Force Majeure may also include but not be limited to hostilities, revolution, acts of war or terrorism, civil commotion, epidemic, accident or quarantines or regional medical crisis, fire, flood, wind, earthquake or storms, strikes and lockouts or shortage of materials or transport facilities or any other acts of god or act of any government or governmental agency including laws regulation or ordinance and proclamation affecting the parties or the Goods.

13.3 Assignment

Neither party may assign its rights and obligations under the Contract without the prior written approval of the other party (such approval not to be unreasonably withheld) provided that either party may assign its rights and obligations to a related body corporate within the meaning of the *Corporations Act 2001* (Cth) provided that the related body corporate is of similar financial standing and has the ability to discharge its obligations under the Contract.

13.4 Jurisdiction

The Contract and each Order will be governed by and will be construed in accordance with the laws of the Northern Territory of Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia and its appellate courts and waives any right to object to proceedings being brought in those courts for any reason.

13.5 Severability

If it is held by a court of competent jurisdiction that:

- (i) any part of these terms and conditions is void, voidable, illegal or unenforceable; or
- (ii) these terms and conditions would be void, voidable, illegal or unenforceable unless any part of these terms and conditions was severed from these terms and conditions,

that part shall be severed from and shall not affect the continued operation of the rest of these terms and conditions.

13.6 Entire Agreement

For the purposes of each Order, the Order together with the Quote and these terms and conditions form the entire agreement between the parties and as such both parties exclude all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law including Act of Parliament or otherwise) relating to that Order.