



STANDARD TERMS & CONDITIONS OF TRADE

1. Definitions and interpretation
 - 1.1 "Buyer" means the person purchasing the Goods or commissioning the Services and includes persons acting on behalf of or stating that they have the authority of the Buyer.
 - 1.2 "Goods" means the goods supplied or to be supplied by the Seller to the Buyer, and where the context permits, includes Services.
 - 1.3 "Guarantor" means the person who agrees to guarantee the obligations of the Buyer to the Seller.
 - 1.4 "Insolvency Event" means, in relation to a party:
 - (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Law) or similar official is appointed over any of the assets or undertaking of the party;
 - (b) the party suspends payment of its debts generally;
 - (c) the party is or becomes unable to pay its debts as and when they fall due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Law;
 - (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors, or any class of them;
 - (e) the party ceases to carry on business or threatens to cease to carry on business;
 - (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
 - (g) an application or order is made for the winding up or dissolution of the party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other party.
 - 1.5 "Price" means the costs of the Goods as agreed between the Seller and the Buyer and subject to clause 4 of these Terms and Conditions.
 - 1.6 "Services" means all services supplied or to be supplied by the Seller to the Buyer.
 - 1.7 "Seller" means **Energy Systems & Services (Aust) Pty Limited – ABN 49 601 267 403**
 - 1.8 Unless expressed to the contrary, in this document:
 - (a) words importing the singular include the plural and vice versa, words denoting a gender include the other gender, and if a word or phrase is defined, cognate words and phrases have corresponding meanings;
 - (b) a reference to a person includes not only a natural person but any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency and that person's successors and permitted assigns;
 - (c) where a party comprises two or more persons an agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party shall be deemed to include a reference to any one or more of those persons;
 - (d) "writing" encompasses all means of reproducing words in a tangible and permanently visible form and includes facsimile transmissions;
 - (e) wherever the word "include" or any form of that word is used it must be construed as if it were followed by "(without limitation)";
 - (f) "Business Day" means a day excluding a Saturday, a Sunday or a public holiday in NSW.
2. Terms and Conditions
 - 2.1 Any transaction between the Buyer and the Seller will be governed by these Terms and Conditions. These terms and conditions are accepted by the Buyer if the Buyer commissions or accepts the Goods and/or Services from the Seller after receiving a copy of these terms and conditions, whether or not the signature of the Buyer is endorsed hereon.
 - 2.2 These terms and conditions may only be varied or rescinded the Seller's written authorisation.
 - 2.3 None of the Seller's officers, employees or agents are authorised to in any way vary these terms and conditions unless in writing signed by the Seller.
 - 2.4 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.
 - 2.5 These terms and conditions supersede any terms and conditions sought to be imposed upon the Goods and/or Services by :
 - (a) the Buyer's general conditions of contract, particularly in regard to insurance, retention sums and liquidated damages; or
 - (b) by incorporation onto the Buyer's purchase orders, despite the acceptance by signature or otherwise by the Seller of the purchase order.
3. Goods and Services
 - 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.
 - 3.2 Any quotation provided to the Buyer is valid for 30 days, and must be accepted by the Buyer in writing. At any time prior to acceptance by the Buyer, the Seller may withdraw or vary the quotation by notice to the Buyer in writing.
 - 3.3 The Seller may, at its absolute discretion, elect to treat any request (whether in writing or otherwise) by the Buyer to supply the Goods in accordance with the quotation as binding on the Buyer and commence the supply of the Goods.
 - 3.4 If the Buyer requests further Goods to be provided, in connection with the original Goods or otherwise, the Buyer will be liable to pay the Seller for those further Goods in accordance with clause 4.
 - 3.5 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
4. Price and Payment
 - 4.1 At the Seller's sole discretion, the Price of the Goods shall be:
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied;
 - (b) at the Seller's current prices and rates for the supply of the Goods; or
 - (c) the Seller's quoted Price if that quote is accepted in accordance with clause 3.2.

- 4.2 The Seller may require the Buyer to pay a deposit. The amount of the deposit or percentage of the Price will be stated at the time of the order of the Goods and becomes immediately due and payable. The Seller is not required to commence the provision of the Goods until any required deposit is paid.
- 4.3 Payment of the Price is due, unless otherwise stated, within 30 days after the date of the invoice, quotation or other writing. Time is of the essence for payment for the Goods. The Seller may from time to time offer to a Buyer other payment terms.
- 4.4 The Seller reserves the right to issue monthly progress claims to the Buyer for the proportionate amount of completed Goods and/or Services in accordance with the contract.
- 4.5 Unless expressly stated in any quotation or contract, the cost of Supply Authority or Energy Retailer fees, stand-down allowances and site works required by the Buyer to be carried out on public holidays are not included and will be invoiced as an additional charge to the Buyer.
5. Supply of Goods and Services
- 5.1 Supply of the Goods and/or Services will be made to the address nominated by the Buyer.
- 5.2 The Buyer must make all arrangements necessary to:
- (a) take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Sellers address; and
 - (b) permit the Seller to supply the Services, including providing rights of access to the site where the Services are to be provided.
- 5.3 Where there is no agreement that the Seller shall supply the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
6. Risk
- 6.1 Notwithstanding that the Seller retains property in the Goods, all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price of the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable.
- 6.3 The delivery to the Buyer's insurer of these terms and conditions by the Seller is prima facie evidence of the Seller's rights to receive the insurance proceeds.
7. Defects and Returns
- 7.1 The Buyer shall inspect the Goods and/or Services on delivery or supply and shall within seven (7) days of delivery or supply notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
- 7.2 The Buyer shall afford the Seller an opportunity to inspect the Goods and/or Services within a reasonable time following delivery or supply if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these conditions the Goods and Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.3 For defective Goods which the Seller has agreed in writing that the buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Buyer has complied with the provisions of clause 7.1; and
 - (b) the Seller will not be liable for Goods which have not been stored or used in a proper manner, and subject to clause 8.
- 7.4 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 10% of the value of the returned Goods plus any freight.
8. Warranty
- 8.1 Subject to clause 8.2 the Seller warrants that if any defect in any workmanship supplied by the Seller becomes apparent and is reported to the Seller within a time frame, as determined by the Seller from time to time, of the date of delivery (time being of the essence) then the Seller may (at the Seller's sole discretion):
- (a) in the case of Goods:
 - (i) repair the defective Goods free of charge;
 - (ii) replace the defective Goods or defective parts thereof; or
 - (iii) credit to the Buyer such amount as the Seller, in its absolute discretion, considers reasonable having regard to the price paid for the Goods and the use of the Goods enjoyed by the Buyer, and
 - (b) in the case of Services:
 - (i) re-supply the Services free of charge;
 - (ii) repair or reinstate any defective Services or defective parts thereof; or
 - (iii) credit to the Buyer such amount as the Seller, in its absolute discretion, considers reasonable having regard to the price paid for the Services and the use of the Services enjoyed by the Buyer.
- 8.2 The conditions applicable to the warranty given by Clause 8.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Buyer to properly maintain any Goods; or
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) damage caused to the Goods by any third party (including, but not limited to, builders and sub-contractors); or
 - (vi) fair wear and tear, any accident or act of God.
 - (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.

- (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyers claim.
- (d) To the full extent permitted by law, the Seller excludes all:
 - (i) implied warranties in respect of the Goods and Services that would otherwise be implied by law into the contract; and
 - (ii) liability for any damage, whether direct, indirect, special or consequential, arising in any way out of the use of or in relation to the Goods or Services.
- (e) Where any law, including the Trade Practices Act or the Fair Trading Act, would operate to render the terms of clause 8.2(d) ineffective or illegal, the Supplier's liability for breach of any warranty or any term implied by law into the contract is limited to:
 - (i) in the case of Goods, the lowest of the cost of replacing the Goods, acquiring equivalent Goods or having the Goods repaired; and
 - (ii) in the case of Services, the cost of having the Services supplied again.
- 8.3 The Seller does not give any warranty in respect of Goods and/or Services manufactured or supplied by third parties. The Seller agrees to procure for the benefit of or assign to the Buyer the benefit whatever warranty is offered by the third party manufacturer or supplier of the Goods or Services. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 8.4 In the case of second hand Goods the Buyer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 9. Buyers Disclaimer
- 9.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement, and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.
- 10. Intellectual Property
- 10.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 10.2 Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 10.3 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trade mark in the execution of the Buyers order.
- 11. Default & Consequences of Default
- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 12% per annum calculated daily and shall accrue at such a rate after as well as before any judgement.
- 11.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the costs of collection incurred by the Seller and any agent engaged by the Seller for that purpose.
- 11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in material breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of his other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 11.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$50.00 or 10% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 In the event that the Buyer suffers an Insolvency Event, then without prejudice to the Seller's other remedies at law
 - (a) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (b) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.
- 12. Title
- 12.1 Property in the Goods shall not pass from the Seller to the Buyer until:
 - (a) the Buyer has paid all amounts owing for the particular Goods; and
 - (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 12.2 It is further agreed that:
 - (a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
 - (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller;

- (f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
13. Security and Charge
- 13.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever, then if the Buyer fails to pay the Price for the Goods in accordance with clause 4 hereof, the following provisions will apply:
- (a) Where the Buyer and/or the Guarantor (if any) in the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer acknowledges and agrees that in order to give effect to this mortgage and/or charge, it will be necessary to sign further documents in registrable form to permit the mortgage and/or charge to be perfected by the lodgment for registration, and the Buyer agrees to sign all such documents forthwith upon provision by the Buyer.
- (b) The Buyer will be liable for any stamp duty payable on any security.
- (c) The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (d) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (e) To give effect to the provisions of this clause 13 the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Sellers nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
14. Privacy Act 1988
- 14.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 14.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Buyer;
- (b) To notify other credit providers of a default by the Buyer;
- (c) To exchange information with other credit providers as to the statue of this credit account, where the Buyer is in default with other credit providers; and
- (d) To assess the credit worthiness of Buyer and/or Guarantor/s.
- 14.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Services & Goods;(b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
- (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 14.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
15. Lien & Stoppage in Transit
- 15.1 Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the goods;
- (b) the right to retain them for the price while the Seller is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale;
- (e) the foregoing right of disposal;
- (f) provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.
16. Unpaid Sellers Rights to Dispose of Goods
- 16.1 In the event that:
- (a) the Seller retains possession or control of the Goods; and
- (b) payment of the Price is due to the Seller; and
- (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
- (d) the Seller has not received the Price of the Goods;

- then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.
17. Goods and Services Tax
- 17.1 In this clause,
- (a) "GST" means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST law;
- (b) "GST law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth); or
- (c) an Act imposing, or relating to the imposition or administration of such a tax.
- (d) "Invoice" means a tax invoice under the GST law.
- (e) "Supply" means the same as in the GST law.
- 17.2 This clause applies if a party to this Agreement becomes liable to pay GST ("the Supplier") in relation to a Supply made under this Agreement ("a taxable supply") to another party to this Agreement ("the Recipient").
- 17.3 In addition to any amounts payable by the Recipient to the Supplier under this Agreement, the Recipient must pay to the Supplier the amount of GST payable on a taxable supply. The GST is payable at the same time as paying the amount on which the GST is calculated.
- 17.4 Immediately upon receipt by the Supplier of the payment referred to in sub-clause (c) hereof, or not later than such other time as the GST law may require, the Supplier must issue an Invoice or invoices to the Recipient for the amount of GST referable to the taxable supply containing such particulars as are required by the GST law.
18. General
- 18.1 This document constitutes the entire agreement between the parties and supersedes any prior negotiations, understandings or agreements with respect to the subject matter of this document or any term of this document.
- 18.2 Each party acknowledges that it has not, in entering into this agreement, relied upon any warranty representation or statement, whether oral or written, made or published by any other party or any person on behalf of any other party or otherwise in connection howsoever with the subject matter of this agreement, except such as are expressly provided herein and subject thereto has relied entirely upon its own enquiries relating to the subject matter of this agreement.
- 18.3 The parties agree that to the extent that each of them may exclude any warranties or conditions which might otherwise be implied in connection with this agreement or the subject matter of this agreement by any competent legislation, then each party hereby expressly excludes from application all such implied warranties and conditions.
- 18.4 Amendments hereto shall not come into operation until duly embodied in an amending agreement properly executed on behalf of both the parties hereto.
- 18.5 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 18.6 The Buyer shall not set off against the Price amounts due from the Seller.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.8 If any provision of this agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation the validity and enforceability of the remaining provisions shall not be thereby affected.
- 18.9 A provision of or a right created under this document may not be:
- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.
- 18.10 Each party agrees, at its own expense, on the request of any other party, to do everything reasonably necessary for the purposes of or to give effect to this document and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.
- 18.11 An obligation of two or more persons binds them jointly and severally.
- 18.12 This document and the transactions contemplated by this document are governed by and construed in accordance with the law in force in the State of New South Wales. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the State of New South Wales and courts of appeal from them for determining any dispute concerning this document or the transactions contemplated by this document. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- 18.13 This contract is divisible. The work performed in each month during the currency of the contract will be invoiced separately. Each invoice for work performed in any month will be payable by the customer in full, in accordance with the terms of payment provided in this agreement, without reference to and despite any defect or default in the work performed or to be performed in any other month.