

1. Application of these Sale Terms

- 1.1 Unless otherwise agreed in writing, these Sale Terms apply to all goods and/or services provided or supplied, or to be provided or supplied, by Energy Power Systems Australia Pty Ltd (EPSA) ACN 055 274 514 to a Customer and are taken to be incorporated into and form part of each Contract.

2. Quotations and the Contract

- 2.1 EPSA's written quotation or estimate of price submitted to the Customer (Quotation) is only valid for the 'validity period' stated in the Quotation document and if no date is stated the validity period will end on the expiry of 30 days following the date of the Quotation, but EPSA reserves the right to withdraw or vary a Quotation (including the Sale Price), at any time during such validity period, or at any time before or after the Quotation is accepted by the Customer, as set out in clause 9.
- 2.2 Where the Customer signs and returns the Quotation to EPSA within the validity period, the Customer agrees with EPSA to purchase and accept the Goods and/or Services in accordance with the terms and conditions of the Contract. Where the Customer signs and returns the Quotation outside the validity period, the Contract comes into effect only if EPSA elects (in its sole and absolute discretion) to accept the Customer's order (including by issuing a Confirmation of Sales Order to the Customer).
- 2.3 The Contract is comprised of:
- (a) the Quotation and documents attached to or otherwise incorporated into the Quotation by reference;
 - (b) these Sale Terms; and
 - (c) the Confirmation of Sales Order,
- which, in the event of inconsistency, will be interpreted in the order of precedence listed above with the first taking priority and so on.
- 2.4 The Customer acknowledges and agrees that the Contract overrides and operates to the exclusion of any terms and conditions provided on behalf of the Customer, including any terms and conditions contained in any Purchase Order or other documentation issued by the Customer to EPSA.

3. Purchase Orders

- 3.1 EPSA's obligations to supply the Goods and/or Services under the Contract is subject to EPSA receiving a Purchase Order and/or a signed Quotation confirming the Customer's order of the Goods and/or Services within the validity period of the relevant Quotation, and stating that the terms and conditions of these Sale Terms will apply to the Purchase Order and/or the signed Quotation. If a Purchase Order or signed Quotation is received outside of the validity period, or it states or contemplates that other terms and conditions will apply to the Customer's order of Goods and/or Services, EPSA's obligations to supply the Goods and/or Services under the Contract will be subject to EPSA's acceptance of the Customer's order (which will be at EPSA's sole and absolute discretion).
- 3.2 For the avoidance of doubt, any terms and conditions set out in or with a Purchase Order or other document issued by or on behalf of the Customer to EPSA (Customer Terms) do not form part of the Contract unless expressly agreed in writing by EPSA. Where the Customer Terms are expressly agreed in writing by EPSA, if there is any inconsistency between the terms and conditions of these Sale Terms or the Quotation and any Customer Terms which form part of the Contract, the terms and conditions of these Sale Terms or the Quotation prevail to the extent of the inconsistency.

4. Delivery

- 4.1 Any delivery, shipping, installation or performance dates indicated by EPSA including in the Quotation or any other documents are estimates only. EPSA will use best endeavours to deliver the Goods to the Site or perform the Services by the Delivery Dates. EPSA may deliver the Goods and/or Services in instalments as they become available and may require payment for each separate instalment in accordance with these Sale Terms. If late delivery occurs for any reason, then the nominated Delivery Date(s) shall be extended by such reasonable period of time as determined by EPSA to take account of the events causing late delivery (Extended Delivery Date).
- 4.2 Unless expressly stated otherwise in EPSA's Quotation, Goods will be Delivered Duty Paid (ref. Incoterms - DDP).
- 4.3 Unless expressly stated otherwise in EPSA's Quotation, EPSA shall not be liable directly or indirectly to the Customer in connection with any delay in delivery, shipping, installation or performance however occasioned. The Customer acknowledges and agrees that it is not entitled to terminate the Contract or cancel all or any part of any order placed with EPSA for Goods and/or Services in respect of a delay in delivery, shipping, installation or performance however occasioned.

5. Risk and title

- 5.1 The Customer bears all risk of loss and damage to the Goods or any Deliverables when the Goods and/ or Deliverables are made available to the Customer at Site.
- 5.2 The Customer must procure and maintain insurance for the Goods and/or Deliverables on normal commercial terms with a reputable insurer for their full replacement value, noting the interests of EPSA, from the time risk passes until ownership passes under clause 5.3. The Customer must provide EPSA with certificates of currency evidencing the insurance on request.
- 5.3 Title to the Goods or any Deliverable only passes to the Customer upon payment in full of the Sale Price for the Goods and / or Services.
- 5.4 Until ownership of the Goods passes to the Customer (a) the Customer must store the Goods, including products into which the Goods have been incorporated so that they are clearly identified as the property of EPSA (b) the Customer must act in a fiduciary capacity to EPSA and hold any proceeds from the sale or disposal of the Goods or any products into which the Goods have been incorporated on trust for EPSA's benefit and pay those amounts to EPSA on demand; (c) EPSA may demand that the Customer return the Goods and may enter any land or premises to retrieve the Goods if that demand is not complied with (d) the Customer must not grant a security interest in the Goods to any person other than EPSA; and (e) despite any other rights or remedies to which EPSA is entitled, EPSA has a lien (including a right of sale) over the Goods.

6. Inspection of the Goods and acceptance

- 6.1 The Customer must inspect the Goods upon delivery. If the Customer believes the Goods are damaged, incorrect or otherwise not in conformity with the Contract, the Customer must within seven (7) days of delivery (or such other period as is stated in EPSA's Quotation) give written notice to EPSA, setting out full details of the non-conformity, damage etc. If EPSA has not received any written notice from the Customer within that seven (7) day (or other agreed) period, the Customer is deemed to have accepted the Goods.
- 6.2 Where a written notice is given to EPSA within the period provided for above, EPSA will promptly respond to such notice and direct the Customer as to the return or rectification of the Goods. To the extent that the damage or non-conformance of the Goods is not caused by any act or omission of the Customer EPSA shall, in its

absolute discretion do any one or more of the following (a) repair the Goods; (b) credit to the Customer the price of returned Goods; or (c) replace the Goods.

- 6.3 In the case of new parts, EPSA will credit to the Customer the price of the Goods if returned within fourteen (14) days of the date of the notice. Thereafter, the credit will be reduced by 15% if the Goods are returned within 28 days. No credit will be given after 28 days. Used parts, parts not stocked by EPSA and any gaskets, seals, belts, hoses (or similar) and opened kits cannot be returned under any circumstances.

7. Specifications & warranties

- 7.1 The Contract may include references to specifications provided by EPSA and/or the Customer. The Customer acknowledges and agrees that if before the manufacture of the Goods the manufacturer modifies its specification, EPSA may, with the Customer's consent (not to be unreasonably withheld) substitute the modified specification for any specification set out in the Contract.

- 7.2 Subject to clause 7.4, EPSA makes no representation, warranty or undertaking regarding the character, quality, condition, suitability or fitness of the Goods to the Customer's particular application and all implied terms as to those matters are excluded. The Customer agrees that:

- (a) it has satisfied itself before placing its order as to the suitability of the Goods for the Customer's intended application; and
- (b) except for the representations directly supported by the manufacturer warranties issued in writing by EPSA (refer clause 7.3 below), the Customer has not relied on any inducement, representations or statement made by or on behalf of EPSA in acquiring the Goods and/or Services.

- 7.3 Warranties against defects in respect of the Goods are provided by the manufacturer and the Customer agrees to register the Goods for warranty purposes in accordance with the instructions provided to it by EPSA. EPSA will notify the Customer of any applicable manufacturer's warranty in relation to the Goods and EPSA's entire responsibility with respect to any warranties for the Goods is to pass on to the Customer the benefit of any such manufacturer's warranty. To the extent permitted by law (including subject to clause 7.4), the manufacturer's warranty is in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise. In the event the Goods are defective while under warranty, EPSA will facilitate the replacement or repair of the defective goods at the manufacturer's option and expense. The Customer acknowledges and agrees that it will not be entitled to warranty services to the extent the Customer has not stored, handled, operated or otherwise used the Goods in accordance with the applicable instructions issued by EPSA or the manufacturer or the claim is made outside of the applicable warranty period. Warranty claims should be directed to the Customer's closest Caterpillar authorised dealer or branch. The Customer is responsible for familiarising itself with and ensuring the end-user registers warranty information (including extended service coverage) at EPSA's website www.energypower.com.au

- 7.4 The Goods may come with guarantees that cannot be excluded under the Australian Consumer Law. To the extent expressly provided for under Australian Consumer Law the Customer may be entitled to (a) a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage; or (b) have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

- 7.5 The Customer is responsible for ensuring that all applicable health and safety regulations are observed, and other appropriate steps

taken in respect of the storage, handling and use of the Goods and safety information, operating instructions and notices supplied with the Goods are attached to (or contained in) the Goods, conveyed to and observed by any person using the Goods and not defaced or removed from the Goods. The Customer shall, insofar as reasonably practicable, ensure all relevant manufacturer product information provided by EPSA from time to time in connection with the Goods is conveyed to and observed by any person using the Goods. Unless otherwise expressly agreed in writing, the Customer shall be solely responsible for the installation and erection of the Goods purchased.

- 7.6 Any repair work, assembly, modification work carried out by EPSA (or other Caterpillar Dealers) on the Goods or installation, or commissioning services undertaken by EPSA is warranted to be free from defects in material and workmanship provided. The Customer acknowledges and agrees that any defect must be discovered and notified to EPSA (or the relevant Caterpillar Dealer) within six (6) months after the date of completion of the repair work by EPSA or the relevant Caterpillar Dealer. The entire extent of EPSA's or the Caterpillar Dealer's liability is limited to the replacement or repair of the defective material or the repair of the defective workmanship if, upon inspection, the repair is found to be defective in material supplied or workmanship. This warranty does not cover labour for removal or installation, or parts or exchange components. The Customer shall bear all transportation and handling costs.

8. Limits on liability

- 8.1 The liability of EPSA under or arising out of the sale and supply of Goods, for breach of any term, condition or warranty implied in or imposed upon the sale or supply of Goods by law is limited, at the option of EPSA:

- (a) in the case of Goods:
 - (i) to the replacement of the goods or the supply of equivalent goods;
 - (ii) to the repair of the goods;
 - (iii) to the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of services:
 - (i) to the supply of the services again;
 - (ii) to the payment of the cost of having the services supplied again.

- 8.2 Except as expressly provided above, EPSA shall have no liability to the Customer in respect of any loss or damage (including consequential or indirect loss or damage or loss of profits) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods or the failure of EPSA to comply with these terms.

9. Price and price adjustments

- 9.1 The price for the Goods and/or Services payable by the Customer is the Sale Price stated in Australian Dollars as set out in EPSA's Quotation plus adjustments calculated in accordance with this Contract. Unless otherwise expressly agreed in writing by EPSA, all costs associated with packaging, transport and delivery of the Goods to the Site are included in EPSA's Sale Price (ref Incoterms – DDP). The Sale Price is subject to adjustments to take account of the matters set out below, and any other matters set out in EPSA's Quotation, where they occur at any time during the 'validity period' stated in the Quotation (or determined under clause 2.1), or after the Quotation has been signed by the Customer or after EPSA receives a Purchase Order from the Customer:

- (a) foreign exchange amounts calculated in accordance with clause 9.3;
- (b) Manufacturer modifications referred to in clause 7.1;
- (c) Changes to the Sale Price that are imposed on EPSA by Caterpillar or by any other manufacturer or supplier of the Goods and/or Services;
- (d) Any significant out of cycle price changes that EPSA may be subject to, including as a result of any prevailing economic conditions; and
- (e) Changes in the costs to EPSA of ocean freight rates, marine insurance rates and / or taxes, duties, export charges and similar fees applicable to the Customer's purchase of the Goods.

9.2 Price adjustments for any of the variables set out in clause 9.1(b) to 9.1(e) above (inclusive), and for any other matters that are expressly set out in EPSA's Quotation (except with respect to foreign exchange movements), shall be effective upon:

- (a) EPSA's delivery to the Customer of a written notice of price adjustment which shall include EPSA's reasonable basis for such price increase; and
- (b) the Customer confirming its acceptance of the price adjustment within 3 business days of receiving EPSA's written notice of price adjustment.

If the Customer rejects EPSA's written notice of price adjustment, or if the Customer does not confirm its acceptance of the price adjustment within the period specified in clause 9.2(b), the Customer will be deemed to have refused to pay the new adjusted Sales Price and EPSA will be entitled to terminate all or any part of the relevant order for Goods and/or Services which remains unperformed, or the Contract as a whole, immediately on written notice to the Customer as provided for in clause 14.3.

9.3 Unless EPSA has stated otherwise in its Quotation, the Sales Price will be adjusted up or down for foreign exchange movements on imported content of the Goods paid for by EPSA in foreign currency in accordance with this clause 9.3. The foreign exchange adjustment amount will be calculated by EPSA by reference to the variation in:

- (a) the Base Exchange rate (usually USD: AUD) being the rate as quoted in EPSA's Quotation; and
- (b) the Actual Exchange rate (usually quoted as USD: AUD) being the rate at which EPSA pays its overseas supplier (which shall not exceed the published rate by Reserve Bank of Australia on that date).

The foreign exchange adjustment amount shall be effective upon:

- (c) EPSA's delivery to the Customer of a written notice of foreign exchange adjustment which shall set out EPSA's calculation under this clause 9.3 of the foreign exchange adjustment amount; and
- (d) the Customer confirming its acceptance of the foreign exchange adjustment amount within 3 business days of receiving EPSA's written notice of foreign exchange adjustment.

9.4 In addition to the price adjustments set out in clauses 9.2 and 9.3 the Customer must pay any taxes, including a sum equal to the amount of any GST payable by EPSA on any taxable supplies made by EPSA to the Customer under or in connection with the Contract, any duties (including stamp duty), levies, charges, fines or imposts on or in connection with the Contract. The Customer shall have no right to set-off any amounts it may owe EPSA against amounts EPSA may owe Customer under this Contract or any other contract between EPSA and the Customer.

10. Payment terms

- 10.1 The Customer represents that it is and will at all times be solvent and has and will at all times have the financial ability to pay for the Goods and/or Services in accordance with the Contract.
- 10.2 If the Customer does not have a commercial credit account with EPSA, the Customer must pay for Goods in advance of delivery and for Services in advance of performance in the amounts (which may be in instalments) without set-off or deduction in accordance with the payment terms specified in EPSA's applicable Quotation.
- 10.3 Where the Customer has a commercial credit account with EPSA, the Customer must pay EPSA without deduction or set-off in accordance with the terms of credit agreed between EPSA and the Customer and the payment terms specified in EPSA's Quotation. The Customer acknowledges and agrees that EPSA may withdraw any credit facilities at any time by the giving of 48 hours' written notice including in respect of Customer orders that have been accepted, Goods already sold, supplied or delivered. In that event all amounts outstanding become due and payable immediately when such credit facilities are withdrawn. The Customer acknowledges that credit extended to the Customer for Goods sold will only be made in accordance with any written agreement between the Customer and EPSA or, if none, in accordance with the terms of credit as maintained by EPSA at the time the Customer's account was established (as subsequently altered by EPSA). In all other respects these sale terms and conditions will apply.
- 10.4 If the Customer fails to pay an invoice in full by the due date, EPSA reserves the right to (in its absolute discretion):
 - (a) deduct the amount outstanding from moneys otherwise due or payable by EPSA to the Customer including by way of any claim to money which the Customer may have against EPSA whether for damages or otherwise whether in respect of this sale of Goods or otherwise;
 - (b) charge interest on the amount outstanding calculated on a daily basis and compounded monthly at an interest rate which is 7% greater than the Reference Rate published by the Australia and New Zealand Banking Group Limited or its successor as at the due date of payment;
 - (c) resell the Goods by giving the Customer written notice that EPSA intends to resell the Goods if the Customer does not forthwith pay the invoiced outstanding amount (and interest thereon) within a specified period (such period not being less than seven (7) business days).
- 10.5 The Customer acknowledges and agrees that if EPSA elects to resell the Goods, EPSA is entitled to retake possession of the Goods (and for that purpose the Customer shall allow EPSA to enter upon any premises where the Goods may be situated for the purposes of removing the Goods) and the Customer shall pay EPSA:
 - (a) charges for and incidental to the storage, handling of the Goods until their delivery under the resale;
 - (b) interest on the Sale Price of the Goods from the date when due until payment upon their resale at the rate stated above;
 - (c) the amount (if any) by which the purchase price on resale is less than the Sale Price which would have been otherwise payable by the Customer;
 - (d) the balance of any expenses incurred by EPSA in making delivery under resale over and above normal delivery expenses which would have otherwise been payable by the Customer; and
 - (e) EPSA's gross profit on the sale to the Customer on account of the resale depriving EPSA of a probable customer for other like Goods. EPSA's rights under clause 10.5 are in addition to any other legal remedy EPSA may have.

11. Trade in

- 11.1 If EPSA has agreed to purchase any trade-in goods from the Customer (as shown in the Quotation), the Customer warrants that it has or will have at the time of delivery unencumbered title (including security interests) to those trade-in goods. Risk in trade-in goods remains with the Customer until inspection and acceptance by the EPSA at EPSA's nominated point of delivery (which will be at the Customer's expense).
- 11.2 If on inspection EPSA reasonably considers that the value of the trade-in goods is significantly less than the value previously attributed to those goods by the Company (as shown in the Quotation), EPSA reserves the right to reduce the value attributed to those goods accordingly and the difference becomes a debt owing from the Customer to EPSA.

12. Personal Property Securities Act 2009 (Cwlth) (PPSA)

- 12.1 For the purposes of the PPSA, the Customer acknowledges that the Contract may form a security agreement in respect of which the Goods are collateral. The Customer:
- (a) grants to EPSA a first ranking security interest and purchase money security interest in all Goods delivered by EPSA and the proceeds from any resale of Goods by EPSA, as security for all indebtedness owed whatsoever to EPSA; and
 - (b) consents to EPSA effecting and maintaining registrations on the Personal Property Securities Register (PPSR) in respect of security interests created or contemplated by the Contract and any proceeds from dealing in the Goods.
- 12.2 EPSA may register a financing statement or financing change statement in respect of a security interest at any time. The Customer agrees to sign any documents, provide information or do anything else EPSA requires to effect and maintain its registration on the PPSR, perfect its security interests, register financing statement or financing change statements or otherwise preserve EPSA's priority position as contemplated by the Contract. EPSA may recover from the Customer its costs incurred by EPSA registering, maintaining and enforcing security interests created or contemplated by the Contract, in the Goods and any proceeds from dealing in the Goods.
- 12.3 The Customer waives its rights under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest in respect of the Goods.
- 12.4 The Customer must not without EPSA's prior written consent: (a) register a financing change statement in respect of a security interest created or contemplated by this Contract or any other agreement between the Customer and EPSA; or (b) register, or allow to be registered, in a third party's favour a financing statement of financing charge statement in respect of the Goods. The Customer and EPSA agree to the extent the PPSA permits not to disclose information of the kind described in section 275(1) of the PPSA to an interested person, unless specifically agreed otherwise. However, if EPSA wants or needs to disclose any particular information the Customer authorises EPSA to do so under section 275(7)(c) of the PPSA.
- 12.5 To the extent permitted to do so, the Customer and EPSA agree to contract out of:
- (a) the following enforcement provisions referred to in section 115(1) of the PPSA: section 95 to the extent it requires EPSA to give notices to the Customer; section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - (b) Part 4.3 of the PPSA, other than section 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2).
- 12.6 EPSA has absolute discretion as to the manner in which it applies money it receives under the Contract.

- 12.7 Except to the extent that the Customer is an individual purchasing Goods or Services wholly or predominantly for personal domestic or household purposes, in order to secure the Customer's due and punctual performance of all its obligations to EPSA (including the payment of all monies owing) under the Contract or otherwise, the Customer charges all of its legal and beneficial interest (present and future) in any and all real property and all present and after acquired property. On EPSA's request, the Customer must at its cost execute any documents and do all things required by EPSA to more fully document or better secure a charge arising under this clause 12.7 on such terms as it sees fit or to register a charge or security interest in respect of any of the Customer's real and personal property including, effect and maintaining registrations on the PPSR. The Customer also consents to EPSA lodging caveats in respect of any of the Customer's property. The Customer appoints EPSA or an authorised office of EPSA to be its attorney for the purpose of executing and registering such documents.

13. Privacy and information

- 13.1 EPSA will comply with the Australian Privacy Principles in all dealing with the Customer. The Customer agrees and acknowledges that EPSA will collect personal information about the Customer and may use and / or disclose that information:
- (a) to provide and market goods and services to the Customer;
 - (b) to assess the Customer's credit worthiness;
 - (c) to assist EPSA in the collection of overdue payments; and
 - (d) for the purposes contemplated in clause 13.3(a). If the Customer does not provide the personal information requested, then EPSA may refuse to enter into the Contract. EPSA may disclose the personal information to other related entities and to Caterpillar Inc. and its related entities in Australia, Singapore and the United States of America. That disclosure may include to overseas recipients located in the United States of America.
- 13.2 EPSA's privacy policy contains information about how the Customer may access the personal information about the individual that is held by EPSA and seek correction of such information as required. The Customer may obtain a copy of EPSA's privacy policy by request or via EPSA's website at www.energypower.com.au.
- 13.3 The Customer acknowledges that the Goods may be fitted with Caterpillar's equipment remote monitoring and information collection system known as Product Link® and if this is the case:
- (a) The Customer acknowledges that data and information concerning the Goods, their condition and operation, which may comprise or include the personal information of the Customer, may be transmitted to EPSA, Caterpillar, Sitech and / or other Caterpillar dealers and the Customer consents to the transmission of such data and information as contemplated in this sub-paragraph (a);
 - (b) The Customer will be responsible for any periodic subscription fees payable to activate and utilise Product Link unless those fees are included in the sale price of the relevant Goods; and
 - (c) The Customer grants to EPSA an irrevocable royalty free licence to sell, sub-licence, grant access to or in any other way use all data and information created by provided to EPSA in connection with any servicing, maintenance, repair or other dealings with the Goods.
- 13.4 The copyright, patent rights, design rights and all other intellectual property rights in respect to or contained within the Goods and/or Services or in any drawing, plan, prototype or specification in relation to the Goods and/or Services or their manufacture which have been developed by or on behalf of EPSA or the manufacturer

shall remain the property of EPSA or the manufacturer as the case may be and no transfer to the Customer of any such rights is included in the price paid or agreed to be paid whether or not such price includes an amount for designing or producing the Goods and/or Services. All such items and all documents, information, systems and know-how provided to or disclosed to the Customer by EPSA and marked or described as "Confidential" or "Commercial in Confidence" shall be treated as confidential by the Customer. The Customer shall not loan, copy, use, dispose of or sell such items, documents, information, systems, or know-how without the prior written consent / authorisation of EPSA.

14. Changes to the Order, Cancellation and Termination

- 14.1 Despite anything to the contrary stated in the Contract, the Customer is not entitled to cancel or change an order without EPSA's prior written consent and upon terms indemnifying EPSA from all resulting losses and damages.
- 14.2 Without limiting clause 14.1, if the Customer cancels an order for Goods and/or Services, then:
- (a) all amounts then owing by the Customer to EPSA in respect of that order and all amounts incurred by EPSA until the date of cancellation in relation to the supply of the Goods and performance of the Services (including foreign exchange costs, shipping costs and holding costs) will become immediately payable and recoverable as a debt due; and
 - (b) EPSA will be entitled to recover from the Customer all costs and expenses incurred by EPSA as a result of the cancellation including, without limitation costs in the categories listed in clause 10.4 above.
- 14.3 EPSA may terminate all or any part of an order for Goods and/or Services which remains unperformed or the Contract as a whole immediately on written notice to the Customer:
- (a) If the Customer breaches the Contract and fails to remedy the breach within 7 days of receiving notice to do so;
 - (b) If the Customer refuses to pay the new Sales Price contemplated in clauses 9.1 and 9.2 without claim or objection;
 - (c) If an Insolvency Event occurs;
 - (d) If in EPSA's opinion any other event occurs which is likely to materially adversely affect the Customer's ability to meet its obligations to EPSA under the Contract.
- 14.4 EPSA's termination rights are in addition to any other rights or remedies EPSA has under the Contract or at law or in equity.
- 14.5 Following termination of an order or the Contract as a whole by EPSA, EPSA may take all necessary steps to repossess the Goods in respect of which ownership has not passed to the Customer under clause 5.3. The Customer authorises EPSA (including where required as agent of the Customer) to enter the premises where the Goods are situated to enable EPSA to repossess the Goods. The Customer indemnifies EPSA from and against all costs, claims, actions and liabilities EPSA may suffer or incur as a consequence of terminating an order of the Contractor or repossessing the Goods including legal costs on an indemnity basis.
- 14.6 If an order for Goods and/or Services or the Contract as a whole is terminated under clause 14.3(b), EPSA will refund to the Customer any amount paid for those Goods and/or Services where those Goods and/or Services have not been delivered to the Customer as at the time of termination.

15. Goods and Services Tax

- 15.1 Unless specifically described in EPSA's Quotation as 'GST inclusive', the Sale Price for the Goods does not include any amount on account of GST.

- 15.2 Where any supply to be made by EPSA under the Contract is subject to GST:

- (a) the consideration payable for that supply but for the application of this clause 15 (**GST Exclusive Consideration**) shall be increased by, and the Customer shall pay to EPSA, an amount equal to the GST payable in respect of that supply (**GST Amount**); and
- (b) the Customer must pay the GST Amount to EPSA at the same time and in the same manner as the GST Exclusive Consideration is payable or to be provided for that supply.

- 15.3 Unless the contrary intention appears, a word or expression used in this clause 15 which is defined in the GST Law has the same meaning in this clause 15.

16. General

- 16.1 The Customer may not assign or subcontract the rights and/or obligations under the Contract without EPSA's prior written consent (which may be provided or withheld at EPSA's discretion).
- 16.2 The relationship between the parties is as independent contractors, and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association. If the Customer is more than one person, each person shall be jointly and severally liable to EPSA.
- 16.3 EPSA may amend, vary or replace the Sale Terms at any time on 14 days written notice. If EPSA varies these Sale Terms, the varied version will be published on EPSA's website at www.energypower.com.au. Any subsequent Quotations and sales of Goods and/or Services will be on the varied or replaced terms. No other amendment to the Contract can be made without the written agreement of EPSA and the Customer.
- 16.4 Each party must do or cause to be done all things necessary or desirable to give effect to and must refrain from doing anything that would hinder performance of the Contract.
- 16.5 A term or part of a term of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining terms or parts of the terms of the Contract continue in force.
- 16.6 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 16.7 The Contract is governed by the law applicable in Victoria, Australia, and each party submits to the jurisdiction of the courts of Victoria.
- 16.8 The Contract documents may be executed in any number of counterparts and all counterparts when exchanged will be taken to constitute one document. The Contract constitutes the entire Contract between the parties as to its subject matter and supersedes all other representations and Contracts in connection with the subject matter of the Contract. The United Nations Conventions on Contracts for the International Sale of Goods (1980) shall not apply.

17. Force Majeure

EPSA is not liable to the Customer for any delay or failure to perform its obligations pursuant to this Contract if such delay or failure to perform is due to force majeure being a circumstance beyond its reasonable control, including strikes, lockouts, fires, floods, storm, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, disease or pandemic, acts of God or any other activity beyond EPSA's control."

18. Dispute Resolution

18.1 If a dispute arises under the Contract, the parties must act in good faith and use reasonable endeavours to resolve the dispute as follows:

- (a) the party claiming a dispute has arisen must give the other party a notice setting out the nature of the dispute (Dispute Notice);
- (b) within 10 business days after a Dispute Notice has been issued, authorised representatives of the parties must meet and attempt to resolve the dispute;
- (c) if the dispute cannot be resolved within a further 7 business days from the start of negotiations or such longer period as the parties may agree in writing, the dispute will be referred to senior management who must meet and attempt to resolve the dispute;
- (d) if after a further 5 business days the dispute has still not been resolved, then either party may refer the dispute to mediation by giving written notice to the other party.

18.2 The mediation will be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or failing such agreement within 5 business days after a party gives notice under clause 18.1(d), by a person appointed by the Chair of Resolution Institute, or such Chair's designated representative, in which case the Resolution Institute Mediation Rules will apply to the mediation. Otherwise, the mediation will be conducted in accordance with such rules and procedures as the mediator determines.

18.3 If the parties have been unable to resolve the dispute within a further 20 business days following the appointment of a mediator, either party may commence legal proceedings.

18.4 Each party must bear its own costs in relation to the mediation and the costs of the mediator must be borne by the parties equally.

18.5 A party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or difference of opinion between the parties regarding the construction of the Contract or the rights and obligations of the parties under the Contract unless it has complied with this clause 18.

18.6 Despite the existence of a dispute, each party must continue to perform their obligations under the Contract, except for any obligation which is the subject of the dispute.

19. Interpretation

In these sale terms unless the contrary intention appears:

Confirmation of Sales Order means a confirmation of the order of Goods and/or Services issued by EPSA to the Customer.

Contract means the contract between EPSA and the Customer for the supply of goods and/or services, and includes the documents set out in clause 2.3.

Deliverables means any document, software, work product or other deliverable provided or required to be provided as part of the Services or in connection with the Goods under the Contract.

Delivery Date means the date or dates that EPSA must deliver the Goods or perform the Services (or part of the Goods or part of the Services) by, as specified in the Quotation or otherwise agreed in writing between the parties.

Goods means the goods to be supplied by EPSA as described in the Quotation.

GST Law has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Insolvency Event means any insolvency-related event that is suffered by the Customer, including without limitation where:

- (a) the Customer ceases to carry on business;

- (b) the Customer ceases to be able to pay its debts as they become due;

- (c) the Customer disposes of the whole or any substantial part of its assets, operations or business (other than in the case of a solvent reconstruction or reorganisation);

- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business;

- (e) any step is taken to enter into any arrangement between the party and its creditors (other than in the case of a solvent reconstruction or reorganisation); or

- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, or other like person of the whole or part of the party's assets, operation or business.

Purchase Order means a purchase order issued by the Customer to EPSA.

Resolution Institute means Resolution Institute (ACN 008 651 232) of Suite 602, Level 6 Tower B, Zenith Centre, 821-843 Pacific Hwy, Chatswood NSW 2067, or its successors.

Sale Price means the amount specified in the Quotation for the sale of Goods and/or provision of Services plus adjustments to the price applied and calculated pursuant to this Contract.

Services mean the services to be provided by EPSA as described in the Quotation.

Site means the location(s) specified in the Quotation, where the Goods are to be delivered and/or the Services performed.

19.2 In these Sale Terms, unless the contrary intention appears:

the **singular** includes the plural and vice versa, and a gender includes other genders;

a reference to A\$, \$A, dollar or \$ is to **Australian currency**;

a reference to **time** is to Victoria, Australia time;

a reference to **business day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia;

a reference to a **party** includes the party's executors, administrators, successors and permitted assigns and substitutes;

a reference to a **person** includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

a **rule of construction** does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it;

if a day on or by which an obligation must be performed or an event must occur is not a **business day**, the obligation must be performed, or the event must occur on or by the next business day; and

headings are for ease of reference only and do not affect interpretation.