

## 1. Ordering Goods and Services

- 1.1 Energy Power Systems Australia Pty Ltd (EPSA) ABN 80 055 274 514 requires the supply of the Goods and/or Services and the Supplier has represented that it can supply the Goods and/or Services.
- 1.2 EPSA may order Goods and/or Services from time to time, by providing a written order to the Supplier specifying the Goods and/or Services to be provided and which is marked 'Purchase Order' (**Order**).
- 1.3 The Supplier only accepts and is deemed to have accepted an Order on the earlier of:
- Signing and returning an Order to EPSA;
  - Notifying EPSA in writing that it accepts the Order;
  - Delivering any of the Goods ordered; or
  - Commencing performance of the Services the subject of the Order.
- 1.4 Once the Supplier accepts the Order, a contract comes into existence (Contract) comprising the following (each a Contract Document):
- where the Supplier and EPSA have executed a separate written contract (for example: a master procurement contract or a subcontract) that separate written contract;
  - the Order;
  - these purchase terms; and
  - any other documents exchanged between the parties and relied on by EPSA and intended to comprise a Contract Document,

If there are any inconsistencies between the terms of any Contract Document listed above, the document listed first will take precedence over documents listed later.

- 1.5 The Contract overrides and operates to the exclusion of the Supplier's standard terms and conditions of sale, service, warranty or technical support and those Supplier documents will have no legal effect and will not constitute part of the Contract even if an EPSA representative signs those documents or they are annexed to an Order.
- 1.6 Unless otherwise set out in a Contract Document, EPSA will not be bound to any minimum order requirement, or any minimum purchase requirement in relation to the Goods and/or Services.

## 2. Delivery

- 2.1 The Supplier must deliver the Goods to the Site or perform the Services by the applicable Delivery Date.
- 2.2 The Supplier acknowledges and agrees that:
- on-time delivery and performance of the Goods and/or Services is of material importance to EPSA, and undertakes not to interrupt, delay, abandon or withhold delivery of Goods or performance of Services for any reason, including a dispute between the parties; and
  - any breach of clause 2.1 may cause EPSA to breach other arrangements it has with third parties for the supply of goods or services or otherwise suffer loss, damages and expenses under those other arrangements.
- 2.3 The Supplier shall keep EPSA fully informed as to the delivery of the Goods and/or performance of the Services including any event which may result in Late Delivery. If Late Delivery occurs or is likely to occur for any reason, EPSA may (without limiting any other right EPSA may have and to the maximum extent permitted by law), take any one or more of the following actions:

- direct the Supplier to (at the Supplier's cost and expense) allocate additional resources or otherwise take additional steps to avoid Late Delivery occurring or to reduce the extent of the Late Delivery;
- grant to the Supplier an additional time for delivery;
- if specified in a Contract Document require the Supplier to pay liquidated damages as specified ) for each complete day of delay up to the actual date of delivery by the Supplier;
- terminate the Contract with immediate effect;
- cancel the Order or Contract for the relevant Goods and/or Services either in whole or in part; and / or
- exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier.

2.4 The Supplier acknowledges and agrees that the liquidated damages calculated and payable under clause 2.3(c) is a genuine pre- estimate of the loss and damage EPSA will suffer as a result of Late Delivery.

2.5 The Supplier must comply with all Commonwealth, State and local shipping, road and rail transport laws and regulations in delivering the Goods (and is responsible for obtaining all necessary approvals, consents and permits for delivery and supplying copies of such approvals, consents and permits to EPSA upon request).

## 3. Risk and title

- 3.1 The Supplier bears all risk of loss and damage to the Goods or any Deliverable until the Goods and / or Deliverable have been delivered into the control or possession of EPSA at the Site and have not been rejected by EPSA under clause 5.3 or clause 5.4
- 3.2 Title to the Goods and / or any Deliverables passes to EPSA on the earlier of:
- payment by EPSA for it (or relevant part of it); and
  - the day before affixation of it (or any part of it) to any EPSA property or Site.
- 3.3 The Supplier warrants that:

- the Goods and / or Deliverables will be free from any liens, charges and encumbrances ;and
- EPSA will be entitled to clear, complete and quiet possession of the Goods and any Deliverables.

## 4. Supply of Goods & Services

- 4.1 The Supplier must at all time, in supplying the Goods or performing the Services:
- perform the Services in accordance with the terms and conditions of the Contract;
  - supply the Goods and provide the Services: (1) professionally, carefully, skillfully and competently; (2) in a timely and efficient manner; (3) in accordance with best practice in the Supplier's industry; and (4) to the satisfaction of EPSA (acting reasonably);
  - maintain and provide suitably skilled and qualified Supplier Personnel, and all other resources required to enable the Supplier to meet its obligations under the Contract;
  - ensure that Supplier Personnel hold and maintain all licenses, permits, clearances and other qualifications that they are required under any law or the Contract to hold and maintain (and provide copies of same to EPSA on request);



- (e) comply, and ensure that Supplier Personnel comply, with all applicable laws, regulations and industry codes of conduct;
- (f) (where relevant to the provision of the Services) comply, and ensure that Supplier Personnel comply, with all of EPSA's security, occupational health and safety, environmental and other policies and procedures made known to the Supplier;
- (g) comply with all reasonable directions of the authorised representatives of EPSA;
- (h) not interfere with any of EPSA's activities, or the activities of any other person located on the Site; and
- (i) not represent or hold out that it is an agent of EPSA or that it has authority to act, or to make any commitment on behalf of EPSA, and must not allow any Supplier Personnel to do so.
- 4.2 Unless the Contract Document expressly states otherwise, the Supplier must supply, at its own expense, all labour, plant, consumables, equipment, tools, appliances or other property and items required to deliver the Goods and/or provide the Services.
- 5. Quality of Goods**
- 5.1 The Goods must:
- (a) be free from any defects in design, materials or workmanship and be fit for the purpose for which they are intended;
- (b) match the description (including any technical or performance specifications) set out in the Order or Contractor as otherwise represented by the Supplier;
- (c) comply with any product standards or industry standards that are relevant to the manufacturing, operation and use of the Goods, and any standards otherwise represented by the Supplier;
- (d) meet all safety and performance requirements described in the Order or Contractor otherwise represented by the Supplier; and
- (e) be supplied with adequate and detailed Documentation.
- 5.2 The Supplier is responsible for procuring all necessary licenses to any intellectual property rights (if any) included as part of the Goods to the extent required for EPSA to own and use the Goods as described in the Contract.
- 5.3 If the Goods fail to comply with the conditions set out in clause 5.1, EPSA will notify the Supplier of such failure or non-compliance and may, at EPSA's election:
- (a) cancel the Order or Contract for those Goods (in whole or in part) without penalty and require the Supplier to collect any Goods already delivered to Site and repay to EPSA all moneys paid to the Supplier for those Goods and/or related Services (whether delivered or not);
- (b) require the Supplier to repair, modify or replace the Goods within 5 Business Days (or such other reasonable period as may be agreed between the parties); and/or
- (c) exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier.
- 5.4 If the Supplier delivers to EPSA a quantity of goods exceeding the quantity of Goods specified in an Order or Contract, the excess goods must be immediately collected at the Supplier's own risk and expense.
- 6. Warranties**
- 6.1 The Supplier warrants that:
- (a) all Goods, Services and Deliverables will be of merchantable quality, be fit for the purpose for which they are intended to be used and comply with all descriptions and specifications provided in the Contract;
- (b) all Documentation will be complete, up-to-date and accurate and suitable for EPSA to use, operate and maintain the Goods and/or Deliverables or to have the Services continued by a third party if the Contract terminates or expires;
- (c) the Supplier has the necessary skills and experience to perform the Services properly and in compliance with the Contract;
- (d) the use of the Goods, Services or Deliverables will not infringe the intellectual property rights of any person;
- (e) as at the date of acceptance or deemed acceptance of the Order, there are no actions, claims or legal proceedings, actual or threatened, that would or may materially hinder or prevent the Supplier from making good its warranties or otherwise performing its obligations under the Contract;
- (f) the Supplier will at all times while providing the Services hold and comply with the terms of all licenses, authorities, approvals and consents which it is required to hold and comply with for the lawful provision of its Services under the Contract;
- (g) it will immediately notify EPSA if it becomes aware of any fact, circumstance or thing that is inconsistent with any of its warranties in this clause 6.
- (h) The Supplier further warrants that the Goods will be new, free from defects in design, material and workmanship for the warranty period specified in the Order (Warranty Period) if any. If a defect arises with any Goods, Services or related Deliverables during the Warranty Period, the Supplier will, at its own expense, repair or replace the defective Goods or re-perform or rectify the defective Services within the time stated by EPSA, or if no time is stated, within a reasonable time. If the goods are not replaced or repaired within that time, EPSA may engage others to repair or replace the defective Goods or rectify the defective Services and the Supplier will be liable for all associated costs incurred by EPSA.
- 6.2 Each of the warranties in this clause 6. (a) is separate and independent and is not limited or restricted by any other warranty or provision of the Contract and (b) is in addition to any guarantees, conditions or warranties implied by law.
- 7. Price and payment terms**
- 7.1 EPSA will pay the Price to the Supplier.
- 7.2 The Supplier may not increase the Price of Goods or Services unless both parties have agreed in writing.
- 7.3 Unless otherwise agreed in writing by EPSA, all costs associated with packaging, transport and delivery of the Goods to the Site are included in the Price.
- 7.4 The Supplier must claim payment for the Goods and/or Services in accordance with any of the following payment arrangements set out in the Contract which will provide for either: (a) payment on completion of the Services or delivery of the Goods; (b) progress payment at monthly intervals; or (c) payment by reference to agreed milestones.
- 7.5 On becoming entitled to payment under the Contract, the Supplier must provide to EPSA an Invoice which meets all the requirements of a valid tax invoice for GST Law purposes which must include the following details: a reference to EPSA's Order and any other relevant Contract Document (if any) including the line item numbers on the Order and contract number (if any); (b) a detailed description of the delivered Goods or performed Services entitling the Supplier to claim payment, (including the date of delivery of the Goods and/or the date of performance of the Services and the relevant quantity of the Goods and/or Services); (c) an individual reference number for EPSA to quote with remittance of payment; (d) the Price relating to the Goods and/or Services, broken down to

reflect the same Price components in the Order and / or Contract Document, including the amount of any applicable GST; and (e) details of the relevant EPSA project / office, Site and relevant EPSA contact name.

- 7.6 If EPSA requests, the Supplier must provide EPSA with all relevant records to calculate and verify the amount set out in any claim for payment / Invoice.
- 7.7 Except as otherwise specified in the Contract, EPSA must pay all Invoices that comply with clause 7.5 within 45 days (or such other period as the Supplier's representative may agree) following the end of the month in which the relevant invoice is received from the Supplier except where EPSA:
- (a) is required by Law to pay within a shorter time frame, in which case EPSA must pay within that time frame;
  - (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier;
  - (c) disputes the Supplier's claim for payment or Invoice, in which case: (1) to the maximum extent permitted by Law, EPSA may withhold payment of the disputed part of the Supplier's claim for payment or Invoice pending resolution of the dispute; and (2) if the resolution of the dispute determines that EPSA must pay an amount to the Supplier, EPSA must pay that amount upon resolution of that dispute; or
  - (d) is otherwise required by Law to withhold a portion of payment for the Goods and/or Services and any related Deliverables provided.
- 7.8 If the Contract states that the Supplier is to be paid by milestone payments, EPSA will pay the Supplier only on the basis of the relevant milestones achieved by the Supplier and the Supplier will only be taken to have achieved a milestone when it has carried out and completed in accordance with the Contract all of the Supplier's obligations and other things comprised in or otherwise required for the achievement of that milestone. The Supplier may not claim payment for partially completed milestones.
- 7.9 Payment of an amount on an invoice or failure to dispute an invoice prior to the time it is paid, does not prevent EPSA from subsequently disputing its obligation to pay that amount, nor is it evidence that the Goods and / or Services and / or related Deliverable has been accepted or that they comply with the Contract.
- 7.10 EPSA may reduce any payment due to the Supplier under the Contract by any amount which the Supplier must pay EPSA, including costs, charges, damages and expenses and any debts owed by the Supplier to EPSA on any account whatsoever. This does not limit EPSA's right to recover those amounts in other ways.

**8. Personal Property Securities Act**

- 8.1 If title to the Goods has passed to EPSA whilst the Goods are in the possession or control of the Supplier for any reason, then the Supplier acknowledges and agrees that:
- (a) the Supplier holds the Goods as bailee for EPSA and a fiduciary relationship exists between EPSA and the Supplier for this purpose;
  - (b) the Supplier grants to EPSA a security interest in the Goods (and any proceeds thereof);
  - (c) for the purpose of section 109(1) of the Personal Property Securities Act 2009 (Cth) (PPSA), the security interest created under this clause constitutes a PPS Lease and does not secure payment or performance of an obligation;
  - (d) EPSA may register a financing statement on the Personal Property Securities Register (PPSR) against the Supplier; and
  - (e) the Supplier waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or

financing change statement relating to any security interest created under this clause 8.

- 8.2 In the event that the Supplier has any security interest in the Goods, the Supplier acknowledges and agrees that any financing statement it registers against EPSA in respect of that security interest on the PPS Register must:
- (a) reflect that any such security interest is a specific security interest;
  - (b) not be registered in either of the 'all present and after acquired property no exceptions' or 'all present and after acquired property with exceptions' collateral classes; and
  - (c) be removed from the PPS Register within 5 business days of the secured obligations of EPSA to the Supplier being satisfied and/or the security interest otherwise being released.

8.3 A word or expression used in this clause which is defined in the PPSA has the same meaning in this clause unless the context otherwise requires.

**9. Inspection and information**

- 9.1 The Supplier must keep EPSA fully informed on all aspects of the delivery of the Goods and/or the performance of any Services, including by promptly responding to requests for information made by EPSA from time to time.
- 9.2 The Supplier must provide to EPSA on request progress reports setting out, in such detail as is reasonably requested, the different stages of design, manufacture or delivery of the Goods and/or performance of the Services.
- 9.3 EPSA may direct the Supplier that the whole or any part of the Goods and / or Services be tested, examined, inspected or reviewed prior to Delivery or promptly following Delivery of the relevant Goods and / or Services. The Supplier and EPSA shall co-operate with each other to arrange a time and place for such inspection and to ensure such parts or samples of the Goods are accessible by EPSA (or its representatives) as may be reasonably required. On completion of the tests, inspection, examination and/or review, the results must be promptly made available to both parties and to the extent that the Goods fail to comply with the conditions in clause 5.1, clause 5.3 shall apply.

**10. Confidential information**

- 10.1 The Supplier must keep the Confidential Information secret and confidential and may only use Confidential Information for the purposes of the Contract. The Supplier must immediately notify EPSA of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- 10.2 The Supplier may disclose the Confidential Information:
- (a) to Supplier Personnel who have a need to know for the purposes of the Contract (and only to the extent that each has a need to know) and before disclosure, have been directed by the Supplier to keep confidential all Confidential Information of EPSA; or
  - (b) where it is required by law to do so, provided that the Supplier must before doing so notify EPSA and give EPSA a reasonable opportunity to take any steps that EPSA considers necessary to protect the confidentiality of that information and notify the third person that the information is Confidential Information.

**11. Variations**

- 11.1 EPSA may, at any time, by giving written notice, add, delete, omit or change the nature, quality, method for delivery, time for delivery or quantity of the Goods and/or Services under the Contract (a Variation).
- 11.2 Prior to directing a Variation EPSA may request, and the Supplier must promptly notify EPSA, whether a proposed Variation can be effected, together with, the Supplier's estimate of the: (a) effect on any work plan or program (including on any Delivery Date); and (b) cost (including all additional time-related costs, if any) of

the proposed Variation.

- 11.3 The Supplier may request EPSA to direct a Variation for the convenience of the Supplier and EPSA may do so in its sole and absolute discretion. Unless a direction under this clause 11.3 provides specifically for additional payment, the Supplier shall not be entitled to either extra time or extra money in relation to such a direction.
- 11.4 EPSA will promptly price each Variation using the following order of precedence: (a) prior agreement; (b) applicable rates or Prices in the Contract; (c) rates or Prices in a priced schedule of rates to the extent that it is reasonable to use them; and (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads, and any deductions shall deduct a reasonable amount for profit and overheads. That price as assessed by EPSA acting reasonably, will be added to or deducted to the Price.
- 11.5 If the Supplier reasonably considers a direction from EPSA constitutes a Variation that does not comply with this clause, it must notify EPSA within 7 days of that direction. If the Supplier fails to notify EPSA in accordance with this clause 11.5, then the Supplier: (a) must comply with the direction; (b) waives any entitlement to additional payment in respect of the direction (whether or not it constitutes a Variation); and (c) releases EPSA from any claim for additional payment in respect of the direction.
- 12. Termination**
- 12.1 EPSA may at any time terminate any Order or Contract for Goods or Services in whole or part by written notice if :
- (a) the Supplier breaches of any of its material obligations under the Contract and such breach is incapable of remedy or the Supplier fails to remedy the non-compliance or breach within 5 Business Days after EPSA requests that the Supplier remedy it;
- (a) the Supplier suffers an Insolvency Event; or
- (b) the terms of the Order otherwise permit EPSA to terminate it.
- 12.2 EPSA may terminate an Order or Contract for Goods without cause at any time prior to delivery (in whole or in part), and the Supplier's compensation will be limited to the Supplier's actual direct costs incurred in respect of the Goods and excludes any Consequential Loss.
- 12.3 If a notice of termination is issued under this clause the Supplier must:
- (a) stop work to the extent required by the notice;
- (b) take such action as necessary or as directed, for the transfer, protection and preservation of EPSA's property (including the Goods if those Goods have become the property of EPSA); and
- (c) follow all reasonable directions of EPSA in relation to vacation of the Site and transition or completion of any Services.

**13. Force Majeure Event**

- 13.1 If a Force Majeure Event prevents a party (Affected party) from performing its obligations under the Contract:
- (a) the Affected party must promptly notify the other party of the obligations which will be affected by the Force Majeure Event;
- (b) those obligations of the Affected party will be suspended for as long as the Force Majeure Event continues;
- (c) the Affected party must use its best endeavours to mitigate the effect of the Force Majeure Event; and
- (d) neither party will be liable to the other party for any liabilities, losses, damages, costs or expenses the other party suffers or incurs as a result of

that Force Majeure Event.

- 13.2 If the Supplier is prevented from performing its obligations for more than 10 Business Days as a result of a Force Majeure Event, EPSA may terminate the Contract with immediate effect by giving written notice to the Supplier.

**14. Insurance**

- 14.1 In addition to any insurance the Supplier is obliged to effect under all applicable laws, the Supplier will effect and maintain (at its own cost) with reputable insurers, insurance to cover its liability under the Contract and all events that may cause loss of or damage to property or injury or death of a person in the performance of the Services and delivery of the Goods. Such insurance will at least include product and public liability insurance and transit insurance.
- 14.2 Upon request, the Supplier must provide to EPSA within 5 Business Days a certificate of currency and statement of insurance, including the date of the policy, for any of the policies referred to in this clause 14 which are held by the Supplier.

**15. Liability and indemnities**

- 15.1 The Supplier agrees at all times to indemnify EPSA and EPSA's Personnel (Indemnified Parties) against all liabilities, losses, damages, costs and expenses that any Indemnified Party may sustain or incur as a result, directly or indirectly, of:
- (a) the provision of, or omission or failure to provide, or error or defect in, the Goods or Services (including a failure to provide the Goods and/or Services by the Delivery Date);
- (b) any breach of the warranties given by the Supplier under the Contract or any other breach of the Contract by the Supplier (including a breach in respect of which EPSA exercises an express right to terminate the Contract);
- (c) any willful, unlawful, dishonest or negligent act or omission of the Supplier or the Supplier Personnel;
- (d) any loss of or damage to any property or injury to or death of any person caused or contributed to by the Supplier or the Supplier Personnel; and
- (e) any claim that the use of the Goods, Deliverables or the results of the Services infringes the intellectual property rights of any person.

- 15.2 Each indemnity described in this clause 15 is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract. EPSA will hold the benefit of the indemnities in this clause in favour of EPSA Personnel as trustee for those EPSA Personnel.

- 15.3 EPSA shall not be liable to the Supplier for any Consequential Loss. The total liability of EPSA to the Supplier arising out of, under or in connection with any other loss or damage arising under or in connection with the Contract (excluding EPSA's liability to pay the Supplier the Purchase Price under the Contract), is limited, in aggregate, to 10% of the Price.

- 15.4 The Supplier must notify EPSA of any claim arising under or in connection with the Contract prior to (a) making its last claim for payment of the Purchase Price under the Contract; or (b) 6 months following last delivery of the Goods and/or Services, whichever occurs earlier. If the Supplier fails to give notice as required by this clause 15.4, the Supplier releases EPSA from all liability in connection with the claim and the basis for it.

**16. Health, safety and environment**

- 16.1 The Supplier must comply with all relevant work health and safety, environmental and workers compensation legislation including all acts, regulations, codes of practice and Australian standards. Without limiting its obligations under relevant legislation, to the extent relevant to the Supplier's undertaking the

Supplier must:

- (a) ensure, that any plant and equipment used by it is appropriate for the task and is adequately maintained and safe for use;
- (b) ensure that the Supplier Personnel are competent and qualified to undertake work on behalf of the Supplier under the Contract and have been provided with adequate information, instruction and training (including induction training);
- (c) conduct risk assessments by appropriately qualified and competent persons and in consultation with relevant Supplier Personnel;
- (d) develop and maintain systems of work and procedures necessary to ensure that any work undertaken by or on behalf of the Supplier is conducted to the highest industry standard, in an efficient and workmanlike manner and without risk to health and safety of any persons. Any procedures prepared by the Supplier must be prepared by appropriately qualified and competent persons, in consultation with relevant Supplier Personnel, and reflect relevant risk assessments. All relevant Supplier Personnel must be trained in those procedures;
- (e) identify and control all hazards and risks associated with the Supplier's obligations under the Contract, including ensuring adequate documentation regarding the implementation and maintenance of controls of such hazards and risks;
- (f) notify EPSA of any subcontractors it may wish to engage and seek EPSA's consent under clauses 19.1 and 19.2;
- (g) immediately verbally notify EPSA of any safety incident or "near-miss" safety incident (whether a person is injured or not);
- (h) immediately notify EPSA verbally if it is issued with any statutory notices by a regulator and provide a copy of any statutory notice to EPSA;
- (i) comply with all work health and safety, environment and workers compensation/rehabilitation rules, requirements and directions of EPSA relating to the Goods and/or Services and any ancillary matters as notified to the Supplier by the EPSA or any person authorised by any law to give directions to the Supplier;
- (j) provide and maintain in a safe condition all necessary and appropriate safety equipment for Supplier Personnel (and, where applicable, EPSA's Personnel and other persons) including personal protective equipment;
- (k) consult, co-operate and co-ordinate its activities with any other person or company who has a work health and safety duty in relation to the Goods and / or Services;
- (l) cease work if there are any changes to risks, tasks, scope of work, the working environment or personnel, and review, and amend if necessary, any relevant risk assessment(s) and work procedures. The Supplier must conduct any refresher training required as a result of those changes and retain documented evidence to demonstrate that this has occurred. The Supplier must not recommence work until this has occurred and the amended risk assessment(s) and work procedures have been submitted to EPSA upon request;
- (m) ensure adequate supervision is provided at all times by appropriately qualified personnel and inform EPSA of any changes to supervisory personnel during provision of any Services; and
- (n) ensure the health and safety of EPSA's Personnel (where relevant), and any other persons that may be affected by its undertaking.

The Supplier must, upon request by EPSA, provide documented evidence of the Supplier's and its authorised subcontractor's compliance with any of the

matters in this clause 16.

**17. Disputes**

- 17.1 If any dispute, question or difference of opinion between EPSA and the Supplier arises out of or under the Contract (Dispute), a Party may give to the other Party a notice (Dispute Notice) specifying the Dispute and requiring its resolution under this clause 17.
- 17.2 If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a Dispute Representative).
- 17.3 If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.
- 17.4 During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.
- 17.5 Nothing in this Clause 17 prevents a Party from seeking any urgent interlocutory relief.

**18. Goods and services tax**

- 18.1 Unless specifically described in the Order or Contract as 'GST inclusive', the Price does not include any amount on account of GST.
- 18.2 Where any supply to be made by the Supplier under the Contract is subject to GST:
  - (a) the consideration payable for that supply but for the application of this clause 16 (**GST Exclusive Consideration**) shall be increased by, and EPSA shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (**GST Amount**); and
  - (b) EPSA must pay the GST Amount to the Supplier at the same time and in the same manner as the GST Exclusive Consideration is payable or to be provided for that supply.
- 18.3 Notwithstanding any other provision of the Contract, EPSA need not make any payment for a taxable supply made by the Supplier under or in accordance with the Contract until the Supplier has given EPSA a tax invoice in respect of that taxable supply.
- 18.4 Unless the contrary intention appears, a word or expression used in this clause 16 which is defined in the GST Law has the same meaning in this clause 18.

**19. General**

- 19.1 The Supplier may not assign or subcontract its rights and/or obligations under the Contract without EPSA's prior written consent (which may be provided or withheld at EPSA's discretion).
- 19.2 If EPSA authorises the use of any subcontractor, the Supplier remains liable to EPSA for the acts and omissions of any sub-contractors, as if they were acts or omissions of the Supplier.
- 19.3 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.
- 19.4 The relationship between the parties is as independent contractors, and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association.
- 19.5 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.



- 19.6 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.
- 19.7 The Contract is governed by the law applicable in Victoria, Australia, and each party submits to the jurisdiction of the courts of Victoria.
- 19.8 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.
- 19.9 A Contract Document may be executed in any number of counterparts and all counterparts when exchanged will be taken to constitute one document.

## 20. Interpretation

- 20.1 In these Purchase Terms unless the contrary intention appears: **Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

**Confidential Information** means the all terms of the Contract and all information disclosed to or

otherwise acquired by the Supplier which is marked as confidential, treated by EPSA as confidential or is otherwise by its nature confidential, including any information or records (or copies of information or records) relating to the business, business associates, financial affairs, products, services, suppliers or clients of EPSA, however excluding information that: (a) the Supplier creates (whether alone or jointly with any third person) independently of EPSA; or (b) is public knowledge (otherwise than as a result of a breach of confidentiality by the Supplier or any Supplier Personnel).

Consequential Loss means consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings and loss of opportunity arising from or in connection with the performance or non-performance of obligations arising under the Contract, however arising.

**Deliverables** means any document, software, work product or other deliverable provided or required to be provided as part of the supply of Goods and/or Services under the Contract.

**Delivery Date** means the dates by which the Supplier must deliver the Goods or perform the Services (or part of the Goods or part of the Services), as specified in the Order or Contract or otherwise notified by EPSA.

**Documentation** means all drawings, specifications, user manuals, notes, guides and other information including warranty statements relating to the operation and maintenance of the Goods, Services and/or Deliverables.

**Force Majeure Event** means anything outside the reasonable control of a party, provided that a strike by employees of the party or employees of a subcontractor of the party (or both) is not a Force Majeure Event unless the strike is part of an industrywide campaign that does not arise out of the dispute between that party or that subcontractor and one or more of its employees.

**Goods** means the goods (if any) to be supplied by the Supplier as described in the Order or Contract

**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 a party, including without limitation where: (a) the party ceases to carry on business; (b) the party ceases to be able to pay its debts as they become due; (c) the party disposes of the whole or any substantial part of its assets, operations or business (other than in the case of a solvent reconstruction or re-organisation); (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of

**Uncontrolled when printed. Version: 2 Date: February 2024**

the party's assets, operations or business; (e) any step is taken to enter into any arrangement or compromise between the party and its creditors (other than in the case of a solvent reconstruction or re-organisation); 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.

**Late Delivery** means a failure to deliver the Goods or perform the Services by the Delivery Date, other than as a result of a Force Majeure Event.

**Price** means the amount specified in an Order or Contract for the sale of Goods and/or provision of Services.

**Services** mean the services to be provided by the Supplier as described in an Order or Contract

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

**Supplier means the supplier specified in an Order or Contract.**

**Personnel** means directors, officers, employees, agents, contractors, or representatives of a party.

- 20.2 In these purchase terms, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (c) a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to a law, statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) 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;
- (g) 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
- (h) headings are for ease of reference only and do not affect interpretation