

AUSTRALIA – ENERMECH TERMS OF PURCHASE FOR GOODS AND SERVICES

INTRODUCTION

These terms of purchase (**Terms**) will apply to the purchase of Goods and Services by EnerMech from the commencement of the EnerMech's engagement with the Supplier, which occurs on the earlier of:

- (a) the issuing of a Purchase Order by EnerMech to the Supplier;
- (b) the supply of any Goods or the provision of any Services by the Supplier to EnerMech; or
- (c) the Supplier otherwise indicating that Goods or Services will be provided by it or by another entity on its behalf to EnerMech.

The supply of any Goods or Services by or on behalf of the Supplier to or for the benefit of EnerMech will be deemed to be unconditional acceptance of these Terms and will constitute a binding contract between the Supplier and EnerMech.

Where a document provided by the Supplier purports to be made on or subject to terms and conditions other than these Terms, the Supplier agrees that such other terms and conditions are disregarded and form no part of the agreement between the Supplier and EnerMech unless EnerMech has expressly agreed otherwise in writing.

Where there is any inconsistency between these Terms and the Purchase Order, the Purchase Order will prevail to the extent of the inconsistency.

1. DEFINITIONS AND INTERPRETATION

In these Terms:

"Approval" means approvals, certificates, licenses, consents, permits, assessment notices and requirements of organisations having jurisdiction in connection with the Goods or the provision of any Services (including the transportation, loading, unloading, delivery of the Goods and operation, maintenance or repair of any Goods), including fees and charges payable in connection with such approvals.

"Assessment Period" means the period being:

- (a) where the Security of Payment Legislation applies to the payment claim made by the Supplier, the longest period permitted for the service of a corresponding payment schedule under that Security of Payment Legislation; or
- (b) if the Security of Payment Legislation does not apply, 15 Business Days.

"Breakdown" means any circumstances in which Goods are not operating or continuing to operate:

- (a) in accordance with the Purchase Order or these Terms; or
- (b) otherwise in a manner in which those Goods could reasonably be expected to operate or continue to operate (having regard to the requirements of the Purchase Order and these Terms).

"Business Day" means a day that is not:

- (a) a Saturday or Sunday; or
- (b) wholly or partly observed as a public holiday throughout the Jurisdiction.

"Delivery" for Goods and Services, has the meaning in clause 6.1.

"Delivery Date" means:

- (a) the date or dates set out in the Purchase Order; or
- (b) if no date is stated in the Purchase Order, as soon as reasonably practicable from receipt of the Purchase Order.

"Delivery Address" means the delivery address specified in the Purchase Order, or such other address as may be notified by EnerMech in writing from time to time.

"Encumbrance" means any lease, mortgage, charge, lien, retention of title arrangement or other encumbrance.

"Entitlement" includes any claim, right or entitlement for the payment of money (including damages) or any other allowance:

- (a) under, arising out of, or in connection with, the Purchase Order or these Terms, including any direction by EnerMech;
- (a) arising out of, or in connection with, either party's conduct before the date of the Purchase Order; or
- (b) otherwise at law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including on a quantum meruit basis.

"Fee" is the price payable by EnerMech to the Supplier for the supply of the Goods and or Services as stated in the Purchase Order.

"Goods" includes physical things and intellectual property.

"Insolvency Event" means the happening of any of the following events in relation to the Supplier:

- (a) the Supplier informs EnerMech or creditors generally, in writing or orally, that the Supplier is insolvent or is financially unable to proceed with the Purchase Order or the supply of Goods and or Services, or any part thereof;
- (b) where the Supplier is a body corporate:

- (i) notice is given of a meeting of creditors with a view to the Supplier entering a deed of company arrangement, entering a scheme of arrangement or composition with creditors or placing the corporation under administration;
 - (ii) the Supplier enters into a deed of company arrangement, scheme of arrangement or composition with creditors;
 - (iii) a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator is appointed;
 - (iv) a winding up order is made in respect of the Supplier;
 - (v) the Supplier resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up) or placed under administration;
 - (vi) the Supplier is deregistered under the *Corporations Act 2001* (Cth); or
 - (vii) the Supplier becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth); or
- (c) where the Supplier is a natural person:
- (i) the Supplier authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors or has a sequestration order made under Part X of the *Bankruptcy Act 1966* (Cth);
 - (ii) a person holding a security interest in assets of the Supplier enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets;
 - (iii) the Supplier has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iv) the Supplier is made bankrupt; or
 - (v) the Supplier commits an act of bankruptcy.

"Jurisdiction" means the laws of Western Australia.

"Law" includes:

- (a) any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local (including the Safety Legislation and the Safety Requirements);
- (b) common law;
- (c) equity; and
- (d) Approvals.

"Personal Information" has the meaning given to that term in the *Privacy Act 1988* (Cth) and includes sensitive information and health information as defined under that Act.

"Policies" means EnerMech's workplace policies, plans, procedures and practices as amended from time to time including but not limited to personal safety, operational safety, work health and safety, environmental, quality, traffic management and equal opportunity policies and any relevant policies of a Principal, but only to the extent that such policies are not inconsistent with EnerMech's own policies.

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

"PPS Law" means:

- (a) the PPS Act;
- (b) any regulations made at any time under the PPS Act;
- (c) any amendment to any of the above, made at any time; and
- (d) any amendment made at any time to any other legislation as a consequence of the PPS Law.

"Principal" means the person that EnerMech contracts with under a head contract in respect of the Project.

"Project" means the project in respect of which any Services are being provided.

"Proportionate Liability" means where the Jurisdiction is:

- (a) New South Wales – Part 4 of the *Civil Liability Act 2002* (NSW);
- (b) Victoria – Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Queensland – Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Western Australia – Part 1F of the *Civil Liability Act 2002* (WA);
- (e) South Australia – Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (f) Tasmania – Part 9A of the *Civil Liability Act 2002* (Tas);
- (g) the Australian Capital Territory – Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) and Part 9 of the *Building Act 2004* (ACT); and
- (h) the Northern Territory – the *Proportionate Liability Act 2005* (NT).

"Purchase Order" means a document identified as such by EnerMech and issued by EnerMech to the Supplier for the provision of Goods and or Services.

"Reference Date" means:

- (a) Delivery; and

- (b) the 25th of each month after the commencement of the Period of Hire up until the last day of the Period of Hire, or if the Security of Payment Legislation mandates an earlier date, that date shall apply.

"Safety Legislation" means:

- (a) any legislation covering work health and safety, mining safety, petroleum and gas safety, environment protection or dangerous goods safety that is applicable to the location and circumstances of the supply of the Goods and or Services;
- (c) regulations made under that legislation;
- (d) any directions on safety or notices issued by any relevant authority;
- (e) any code of practice or compliance code or industry standard appropriate or relevant to any work undertaken by the Supplier; and
- (f) without limiting the generality of the above, where the Jurisdiction is in:
 - (i) New South Wales – *Work Health and Safety Act 2011* (NSW);
 - (ii) Victoria – *Occupational Health and Safety Act 2004* (Vic);
 - (iii) Queensland – *Work Health and Safety Act 2011* (Qld);
 - (iv) Western Australia – *Work Health and Safety Act 2020* (WA);
 - (v) South Australia – *Work Health and Safety Act 2012* (SA);
 - (vi) Tasmania – *Work Health and Safety Act 2012* (Tas);
 - (vii) the Australian Capital Territory – *Work Health and Safety Act 2011* (ACT); or
 - (viii) the Northern Territory – *Work Health and Safety (National Uniform Legislation) Act 2011* (NT),and includes any regulations of the relevant Acts.

"Safety Requirements" means any direction, instruction, request or requirement relevant or necessary for compliance by EnerMech or the Supplier with Safety Legislation or otherwise in respect of safety at the Site, and including any such matter of which the Supplier has been informed by EnerMech orally or in writing.

"Security of Payment Legislation" means where the Jurisdiction is:

- (a) the Australian Capital Territory - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (b) New South Wales – the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (c) the Northern Territory – the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (d) Queensland – the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (e) South Australia – the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (f) Tasmania – the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (g) Victoria – the *Building and Construction Industry Security of Payment Act 2002* (Vic); and
- (h) Western Australia – the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

"Security Interest" has the meaning given to that term in clause 22(a).

"Services" means the provision of work or services by the Supplier to EnerMech by reference to a Purchase Order.

"Site" means the physical location at which and Services are to be performed in accordance with these Terms, including any site details specified in the Purchase Order.

"Supplier" means any person who provides Goods and or Services to EnerMech, including by reference to a Purchase Order.

"Technical Requirements" means any requirement of a technical nature, and includes any specifications and/or drawings supplied or referred to by EnerMech, in respect of the Goods and or Services, described or referred to in a Purchase Order.

Unless the context otherwise requires:

- (a) including and similar expressions are not words of limitation;
- (b) a reference to a statute, regulation, code or other law or a provision of any of them includes any amendment or replacement of it, and another regulation or other statutory instrument made under it, or made under it as amended or replaced;
- (c) if any day on or by which a person must do something under these Terms is not a Business Day, then the person must do it on or by the next Business Day; and
- (d) a reference to 'month' means calendar month and 'day' means calendar day.

Unless these Terms or a Purchase Order expressly provide otherwise, any and all of the Supplier's obligations are to be discharged by the Supplier at its own cost and expense.

No rule of construction applies to the disadvantage of a party on the basis that the party put forward these Terms or any part.

Any provision of these Terms which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of these Terms.

Capitalised terms have the meanings given in clause 1 of these Terms.

Notwithstanding any other provision of these Terms, the Supplier is responsible for supplying the Goods and carrying out any activities and performing any work, paying for the costs and expenses, and satisfying the requirements and obligations, identified in the Purchase Order as being the responsibility of the Supplier.

EnerMech may either itself or by a third party, procure any Goods and or supply any Services, including perform any obligation under these Terms which the Supplier has failed to perform, or which EnerMech determines is required to be performed due to an act, omission or default of the Supplier or its employees, agents or subcontractors. All costs incurred by EnerMech in doing so will become a debt due and owing from the Supplier to EnerMech upon EnerMech incurring that cost.

2. FEE

EnerMech will pay the Supplier the Fee for the supply of the Goods and or Services according to, and in compliance with, these Terms.

The Supplier agrees that the Fee constitutes full consideration for the due and proper supply by the Supplier of the Goods and or Services under the Purchase Order according to these Terms, including:

- (a) the cost of delivery of the Goods to any Delivery Address;
- (b) unloading, erecting or assembling and maintaining of any Goods (as applicable);
- (c) the cost, for transportation of any Goods to the Site and the unloading of any Goods at the Site; and
- (d) all amounts due in respect of insurance, duties, taxes and packing costs and any other costs and expenses associated with manufacturing, maintaining, delivering and/or supplying the Goods and or Services.

3. SUPPLIERS WARRANTIES

3.1 Supplier's general warranties

The Supplier must supply and Goods and or perform any Services:

- (a) in accordance with each and every direction by EnerMech;
- (b) with due expedition and without delay; and
- (c) so as to fulfil and complete supply of the Goods and Services by the Delivery Date.

3.2 Assurances and warranties as to condition

The Supplier must ensure that, and warrants that, the Goods

- (a) match the description in the Purchase Order and accord with manufacturer's specifications and other appropriate requirements;
- (b) are new unless otherwise required by the Purchase Order and where not new are in good repair and working order and are safe and in an appropriately serviceable condition;
- (c) are fit for purpose;
- (d) are fit for any other purpose made known to the Supplier by EnerMech;
- (e) are free from any Encumbrance;
- (f) are free from any defects in design, materials and workmanship;
- (g) where not new have been maintained in proper working order and (where so provided for in the Purchase Order) will be maintained by the Supplier;
- (h) fully comply with all Technical Requirements and the other requirements of these Terms; and
- (i) comply with all Laws;

3.3 Reliance upon warranties

The Supplier acknowledges and agrees that EnerMech has entered into this agreement in reliance on the warranties provided by the Supplier in these Terms (including the terms in clauses 3.1 and 3.2).

3.4 Documentation of condition for plant and equipment

The Supplier must forthwith upon demand by EnerMech produce appropriate documentation to confirm that any Goods comprising plant and or equipment has been inspected within the past 12 months by a competent person and is in a safe, serviceable condition, and complies with all relevant Law and all relevant Australian Standards.

3.5 Supplier not relieved of obligations

No review, inspection, examination, check, acceptance or approval by EnerMech of, or failure by EnerMech to review, inspect, examine, check, accept or approve, the Goods (whether under clause 6, this clause 3 or otherwise) will:

- (a) limit or otherwise affect the rights and entitlements of EnerMech;
- (b) give rise to any Entitlement of the Supplier; or
- (c) limit or otherwise affect the Supplier's liabilities and obligations arising out of, or in connection with, these Terms.

3.6 No escalation

The parties acknowledge and agree that the Fee is not subject to price escalation or other adjustment (including for rise and fall in costs).

4. SITE

EnerMech will (to the extent that it has the legal right to do so, provide the Supplier with access to the Site to perform the Services, and the Supplier acknowledges that its access to the Site or physical portions thereof may be restricted, limited for any period of time, non-continuous or obstructed by other work or activities. The Supplier acknowledges and agrees that it has no Entitlement in respect of any such restriction, limitation, non-continuity or obstruction.

The Supplier must cooperate and coordinate its Services with EnerMech, and with the Principal, all other contractors, and with all subcontractors of EnerMech and any all other persons involved in the Project at the Site and use positive measures to actively avoid interfering with or disturbing other work on Site. The Supplier also undertakes to comply with any direction by EnerMech which is given for the purposes of coordination or cooperation.

To the extent that the Supplier is present on the Site, it undertakes to not deposit any rubbish or waste of any kind and further undertakes to keep the Site clean and tidy and remove any of its rubbish from the Site.

EnerMech may at any time and for any reason direct the removal from the Site of any employee, or agent or subcontractor of or sub-supplier to the Supplier.

5. HEALTH AND SAFETY

5.1 General Obligations

The Supplier must carry out any Services in a perfectly safe and proper manner as to protect persons and property. The Supplier must ensure that in carrying out any Services, it and its employees, agents and subcontractors comply with the relevant Safety Legislation and Safety Requirements. And the Supplier must (and must ensure that its employees, agents and subcontractors engaged by it to perform any work or services on its behalf) at all times identify risks to the health and safety of any person (including the Supplier's employers, agents and subcontractors, their respective employees, agents and subcontractors, EnerMech's employees, agents and subcontractors, all members of the public and everyone else on or in the relevant vicinity of the Site) and the Supplier shall exercise all necessary precautions to ensure that all such persons are not exposed to risks to their health or safety from any conduct of or activity performed by the Supplier.

5.2 Risk Assessment

Without limiting the Supplier's other obligations under these Terms, the Supplier must ensure that the risks to the health or safety of any persons arising from the use of the Goods have been identified by the Supplier and communicated to EnerMech and that EnerMech have been fully informed of the appropriate and relevant control measures in time to, so far as is reasonably practicable, allow EnerMech eliminate all risks associated with the use of the Goods.

5.3 Consultation, co-operation and co-ordination

The Supplier must (so far as is reasonably practicable) consult, co-operate and co-ordinate any Services with EnerMech and with all other persons who are likely to be impacted or effected by the Services, including to:

- (a) ensure optimal health and safety risk management; and
- (b) enable EnerMech and those other persons to fully comply with all obligations under the relevant Safety Legislation.

5.4 Supplier must inform EnerMech

The Supplier's obligations, including to inform EnerMech, under this clause 5 are continuous and ongoing and in respect of any notifiable or reportable incident or event, however defined under the relevant Safety Legislation, the obligation to inform is immediate.

5.5 Supplier must provide safety information for Goods and Services

Without limiting the other provisions of this clause 5, the Supplier must, immediately upon request by EnerMech, provide EnerMech with access to all safety related information, including:

- (a) relevant licenses, certifications, authorisations and approvals;
- (b) work method statements in respect of the Services;
- (c) job safety analyses in respect of the supply of Services;
- (d) risk assessments;
- (e) induction and training records; and
- (f) incident records and reports.

5.6 Suspension for Health and Safety breach

Without limiting any other requirement in these Terms, if the Supplier breaches any of its obligations under this clause 5 EnerMech may direct the Supplier to suspend the whole or part of the Services. The costs incurred by EnerMech as a direct or indirect result of or in connection with the Suspension (including the cost to EnerMech of procuring replacement Goods and or alternative Services from any other source is a debt due and owing by the Supplier to EnerMech from the time when EnerMech determines that it has incurred that cost or those costs.

6. DELIVERY AND COLLECTION

6.1 Goods

If the Purchase Order requires the Supplier to deliver the Goods then, the Supplier must deliver the Goods to the Delivery Address, and the Supplier must, unless otherwise agreed by EnerMech in writing, procure:

- (a) the transit of the Goods to the Delivery Address; and
- (b) the loading and off-loading of the Goods at the Delivery Address.

Delivery will be deemed to have occurred when:

- (c) the Goods has been delivered to the Delivery Address in good order and in due and proper condition and otherwise in accordance with these Terms; and
- (d) EnerMech has declared in writing that it has accepted the Goods such.

6.2 Packaging and labelling of Goods

The Supplier must pack and label the Goods:

- (a) to ensure that they are not damaged during delivery and or storage at the Delivery Address or the Site;
- (b) in accordance with any requirements in the Purchase Order and these Terms; and
- (c) in accordance with any directions by EnerMech and otherwise in accordance with all applicable Laws.

EnerMech will provide the Supplier with access to the Site where appropriate to enable the Supplier to deliver the Goods, and in effecting Delivery the Supplier must comply with each and every direction given by any person with authority relating to the Site.

6.3 Delay and Alternative Materials

If any Goods are likely to become unavailable or do become unavailable and cannot be delivered by the Delivery Date, the Supplier must notify EnerMech in writing identifying those Goods which:

- (a) are likely to become or have become unavailable and shall provide a list of comparable Goods to the Goods which are likely to or have already become available to be delivered by the Delivery Date (**Alternative Goods**), together with the cost of the Alternative Goods; and the expected date of delivery (**New Delivery Date**).of those Alternative Goods

Upon receiving notice under this clause EnerMech may, without prejudice to any rights it has under these Terms:

- (b) accept the New Delivery Date;
- (c) elect to receive the Alternative Goods in lieu of the Goods; or
- (d) direct that the Goods be omitted from the Purchase Order.

If EnerMech elects to accept Alternative Goods, or directs that the Goods be omitted, then the Fee shall be increased or decreased according to EnerMech's determination of the value of the Goods and/or the Alternative Goods.

Any costs incurred by EnerMech as a result of or associated with any delay in the Delivery of the Goods will become a debt due and owing by the Supplier to EnerMech from the time when the delay first commences to the time when the Alternative Goods have been supplied to EnerMech and are available for use by EnerMech.

7. REJECTION

EnerMech may at any time whether before or after delivery, reject any Goods or Services which it determines to be inferior, defective, damaged or otherwise not in accordance with the Purchase Order (including any Technical Requirements in, or referred to in, the Purchase Order) or these Terms, and where EnerMech determines that any such inferiority, defect, damage or non-compliance exists, then without limiting the liability of the Supplier, EnerMech may direct the Supplier to rectify the inferiority, defect or damage and or demand that the Supplier refund any amount to EnerMech from any payment already made by EnerMech to the Supplier in respect of the rejected Goods and or Services and forthwith upon each such direction and or demand the Supplier shall provide EnerMech with replacement Goods and or Services, and or pay the amount so demanded. Any cost incurred by EnerMech in connection or associated with any such inferiority, defect, damage or non-compliance will also become a debt due and owing by the Supplier to EnerMech forthwith upon EnerMech incurring that cost.

8. COMPLIANCE

The Supplier must comply with:

- (a) all Laws;
- (b) the Policies; and
- (c) directions by EnerMech.

Without limiting the above, the Supplier must comply with and satisfy all relevant Law, and otherwise apply for, obtain and maintain, all Approvals necessary for or associated with any Services.

9. MODERN SLAVERY

The Supplier must take all reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Supply of Goods and or the supply of Services including in the operations and supply chains used in the carrying out of the Supplier's operations. If at any time the Supplier becomes aware of Modern Slavery practices arising in connection with the supply of Goods and or Services including in the operations and supply chains used in procuring any Goods or providing any Services the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities with which it is engaged. For the purposes of this clause, Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

10. ANTI BRIBERY

The Supplier must not directly or indirectly give or offer to any person any gift, gratuity, bribe or other thing of value which could be construed as corrupt practice to any person working within a commercial organisation, a government entity, a political party, or a political party candidate for the purpose of influencing any act or inducing any person working within a commercial organisation, a government entity or a political party to use his, her or its influence to assist in obtaining or retaining business in any country in a manner which is illegal or which could subject EnerMech to civil or criminal penalties, or which is inconsistent with EnerMech's Policies.

The Supplier agrees that it shall take no action or use or spend any funds, regardless of the source, in violation of all applicable including without limitation section 70.2 of the *Criminal Code Act 1995* (Cth).

The Supplier must ensure that any person or subcontractor associated with the Supplier is bound terms equivalent to those imposed on the Supplier in this clause.

11. IMPORT AND EXPORT COMPLIANCE

The Supplier shall not take any actions in respect of the supply of Goods and or the performance of Services which are contrary to the export control Laws and regulations of the Jurisdiction in which the Goods are supplied and or the Services are to be rendered.

The Supplier acknowledges that export control Laws may affect not only the supply of Goods and or Services but also technical data and plans and specifications dealing with the Services. The Supplier shall immediately notify EnerMech if the Supplier knows or has a reasonable suspicion that any Goods, and/or technical data, plans, or specifications may be redirected to other countries in violation of export control Laws. The Supplier must use its best endeavours to obtain all necessary export and other licences, consents, clearances and/or authorisations (the "Export Licences") required in order to fulfil its obligations under these Terms. The Supplier shall, in a timely manner and at its own costs and expense provide EnerMech such end-user certificates, end-user undertakings or other information as EnerMech may request in support of obtaining and maintaining and Export Licences.

The Supplier shall be and remain responsible for complying with all Laws governing the importation of the Goods into any Country or Jurisdiction other than Australia and for the payment of any duties or taxes. The Supplier warrants that it will not sell, distribute, disclose, release, receive or otherwise transfer any item or technical data obtained pursuant to these Terms or in violation of relevant Laws including: (a) US Export Administration Regulations and the International Traffic in Arms Regulations (ITAR); (b) applicable EU export control regulations, sanctions and embargoes administered; (c) applicable US sanctions and embargoes administered by the US.

12. INTELLECTUAL PROPERTY

The Supplier:

- (a) warrants that the Goods and or Services and EnerMech's use and or enjoyment of the Goods and services will not infringe any intellectual property rights or moral rights;
- (b) grants EnerMech a royalty free, irrevocable, transferable licence, including a right to sublicense, to use the Supplier's intellectual property rights existing at the date of the Purchase Order to the extent necessary for EnerMech and a Principal to make full use of the Goods and Services for any and all purposes; and
- (c) indemnifies EnerMech against any damage, expense, loss or liability suffered or incurred by EnerMech arising out of, or in connection with, any breach by the Supplier of (a) immediately above.

13. DAMAGE TO PERSON OR PROPERTY

The Supplier must take all necessary steps to prevent damage or nuisance to any property, and to prevent harm or nuisance to any persons, on or near the Site. If any damage is caused by the Supplier or its employees, subcontractors or agents, the Supplier must, at its own cost, remedy the damage to the satisfaction of the Principal and EnerMech.

If the Supplier fails to comply with its obligations in this clause, then EnerMech may perform those obligations itself, or through others, and all costs and expenses incurred by EnerMech in performing those obligations will become a debt due and owing from the Supplier to EnerMech forthwith upon it being incurred by EnerMech.

The Supplier indemnifies and undertakes to continue to indemnify EnerMech in respect of against any damage, loss cost and or expense and in respect of every liability incurred by EnerMech arising out of, or in connection with any loss of or damage to any real or personal property; and every claim or proceeding in respect of personal injury to or death of any person, arising out of, or in connection with, the Goods and or the use of the Goods including any act or omission of the Supplier or its employees, subcontractors or agents in connection with the Goods and Services but the Supplier's liability to indemnify EnerMech under this clause will be reduced proportionately to the extent that a negligent act or omission of EnerMech caused or contributed to the loss, damage, delay, injury or death.

Other than for amounts that become payable under these Terms, neither party to these Terms is liable to the other party at law, including negligence, by statute, in equity or otherwise, for Consequential Loss, irrespective of cause including default, negligence or breach of statutory duty.

EnerMech's total cumulative liability to the Supplier under or in connection with the Purchase Order, these Terms and or any supply by the Supplier to or for the benefit of EnerMech, whether arising in contract, tort (including negligence) or otherwise, shall not exceed payment of the Fee.

14. INSURANCES FOR SERVICES

Without limiting the effect of any other provision in these Terms, the Supplier must at all times whilst providing Services have in place and maintain

- (a) public liability insurance (in the amount not less than \$20,000,000) in the name of the Supplier, noting the interests of EnerMech and each other person who EnerMech advises the Supplier to have noted, to cover all of them for their respective rights and interests and covering their liabilities to third parties and the Supplier's liability to EnerMech for loss of or damage to property (including any indirect or consequential loss) and death of or injury to any person; and
- (b) workers compensation or employee liability insurance as required by Law, providing cover against statutory and common law liability for death of or injury to persons employed by the Supplier, and where permitted by Law, extended to provide indemnity for EnerMech and the Principal's statutory and common law liability to any employee.

The Supplier must maintain each such policy of insurance for the period during which it has any potential legal liability. Any public liability insurance policy that the Supplier is required by these Terms to have in place must contain cross-liability and waiver of subrogation provisions (including a provision that a failure by any insured to observe and fulfil the terms of the policy (including because of any non-disclosure, breach of any duty or act or omission) shall not prejudice the right of any other insured to claim under the insurance).

15. PROOF OF INSURANCE

The Supplier must, before commencing any Services, and whenever otherwise requested by EnerMech provide EnerMech with evidence (satisfactory to EnerMech) that any insurance cover required by these Terms has been effected and is current (including copies of the certificate of currency, and, if required by EnerMech, the full policy terms).

If the Supplier fails to produce evidence as above to the satisfaction and approval of EnerMech, then EnerMech may effect and maintain the insurance and pay the premiums, and the cost to EnerMech of doing so will become a debt due and payable from the Supplier to EnerMech upon EnerMech incurring the cost.

16. TITLE

Full legal and equitable title in the Goods passes to EnerMech upon the earlier of EnerMech making any payment to the Supplier or EnerMech taking delivery of the Goods.

17. CLAIMS AND PAYMENT

The Supplier may claim payment of the Fee in respect of any Goods and or Services supplied to EnerMech and EnerMech shall pay the Fee as adjusted for any additions or deductions under these Terms.

The Supplier must submit each claim for payment of the Fee in a form approved by EnerMech and must do so on each Reference Date.

Each claim for payment must:

- (a) be given in writing to EnerMech;
- (b) identify the Goods and or Services supplied in respect of which payment is claimed;
- (c) identify the amount claimed and details of how the claim has been calculated; and
- (d) contain any other information or documents as EnerMech may reasonably require.

Following receipt of a claim for payment under this clause, EnerMech may, within the Assessment Period following receipt of the Supplier's claim for payment, issue to the Supplier a payment schedule setting out:

- (e) the payment claim to which it relates;
- (f) any amount which EnerMech decides that it is entitled to retain, deduct, withhold or set-off under these Terms or otherwise;
- (g) EnerMech's determination of:
 - (i) the moneys due from EnerMech to the Supplier which EnerMech proposes to pay; and
 - (ii) if EnerMech determines that no moneys are due from it to the Supplier, the moneys due from the Supplier to EnerMech; and
- (h) if the amount referred to in clause (g) above is less than the amount claimed by the Supplier, the reasons for the difference and, if it is less because of the withholding, retention, deduction or setting-off of payment for any reason, the reasons for withholding, retaining, deducting or setting-off payment.
- (i) If EnerMech issues a payment schedule determining an amount as payable by:
 - (i) EnerMech to the Supplier, then EnerMech must pay to the Supplier, the amount specified in the payment schedule as due by the due date specified in the relevant Security of Payment Legislation; or
 - (ii) the Supplier to EnerMech, then the Supplier must pay EnerMech the amount assessed within 5 Business Days of the issue of the payment schedule; or
- (j) If EnerMech does not issue a payment schedule, then EnerMech must pay to the Supplier the amount of the Fee claimed by the due date specified in the relevant Security of Payment Legislation.

Neither a claim for payment, the issue of a payment schedule nor a payment of moneys will be an admission of liability or evidence that the Supplier has carried out its obligations or provided the Services in accordance with these Terms. And in all circumstances payment will be on account only.

Where the Supplier fails to give a claim for payment, EnerMech may nevertheless issue a payment schedule.

Failure to set out in a payment schedule an amount which EnerMech is entitled to retain, deduct, withhold or set-off does not prejudice EnerMech's right to subsequently exercise a right to retain, deduct, withhold or set-off any amount in a later payment schedule or otherwise. EnerMech may correct any error or omission in a payment schedule in a subsequent payment schedule.

EnerMech may deduct, withhold or set off from any money payable (or any money which may be payable or any money which would, but for this paragraph, be payable) by EnerMech to the Supplier under, or in connection with, these Terms or the Purchase Order any debt or other moneys due, or which EnerMech determines to be due, to it from the Supplier whether under, or in connection with, these Terms or the Purchase Order, any other agreement between EnerMech and the Supplier, or on any other legal or equitable basis or otherwise.

18. QUALITY ASSURANCE

Where advised as necessary by EnerMech the Supplier must establish and maintain a quality assurance system that complies with:

- (a) the quality assurance system known as AS/NZS ISO 9001:2000 Quality Systems; and
- (b) the requirements of these Terms.

19. SUSPENSION UNDER HEAD CONTRACT

Where a suspension arises under any head contract in respect of the Project between EnerMech and the Principal involving any Services under these Terms, EnerMech may immediately suspend the supply of Goods and or Services, and thereupon the Supplier shall no longer be entitled to charge the Fee for any Services or be entitled on any other basis to compensation..

20. DEFAULT OF THE SUPPLIER

The following are acts of default by the Supplier for the purposes of this clause:

- (a) the Supplier breaches any term, condition or warranty of or in these Terms; or
- (b) an Insolvency Event occurs, or the Supplier advises EnerMech that it is unable to pay its debts or part of them as they fall due.

If an act of default under clause (a) above occurs, then EnerMech may, by written notice to the Supplier, do either of the following:

- (c) terminate the supply by the Supplier of any Goods and or Services; or
- (d) take all or any part of the supply of any Goods and or Services out of the hands of the Supplier.

If EnerMech has exercised its rights under clause (c) (d) above to terminate the supply of Goods and or Services or take the supply of any Goods and or Services out of the hands of the Supplier:

- (e) then EnerMech may do all things necessary to ensure the proper performance of the Supplier's obligations under these Terms and the Purchase Order;
- (f) EnerMech will not be obliged to make any further payment to the Supplier;
- (g) EnerMech may recover as a debt due and immediately payable from the Supplier, at its election and in its absolute discretion, either the actual or anticipated cost suffered or incurred, or anticipated to be suffered or incurred, by EnerMech (including amounts paid or allowed to the Supplier and any liquidated or other damages payable by EnerMech to a Principal and any other damage, expense, loss or liability suffered or incurred, or anticipated to be suffered or incurred, by EnerMech as a direct or indirect result of the relevant act of default, less the amount which would otherwise have been paid to the Supplier if the relevant act of default had not occurred and the Supplier had fully and faithfully carried out its obligations in accordance with these Terms and the Purchase Order; and
- (h) in addition to EnerMech's remedies and rights and the Supplier's liabilities as set out above, EnerMech will have other remedies and rights, and the Supplier will have any other liabilities as they would respectively have at Law had the Supplier committed an act of repudiation and the Company elected to accept that repudiation and recover damages.

If the Supplier breaches (including repudiates) these Terms, nothing in this clause will prejudice the right of EnerMech to recover damages or exercise any other right or remedy.

21. TERMINATION FOR CONVENIENCE

EnerMech may terminate the supply of Goods and or Services by written notice to the Supplier at any time for any reason (including where a Head Contract is terminated) and may in its absolute and unfettered discretion then either itself or by engaging others carry out any of the Supplier's obligations which remain to be performed. Subject to and without limiting any of EnerMech's other rights, if EnerMech terminates under this clause, then EnerMech must pay the Supplier:

- (a) that part of the Fee payable in respect of the period before the date of termination (and which remains unpaid), being the amount which would have been payable on account of the Fee if the supply of Services had not been terminated and the Supplier had made a claim for payment under clause 14 above on the date of termination; and
- (b) for the Goods, provided the Goods become the legal and equitable property of EnerMech upon payment,

The Supplier's entitlement to payment under this clause is its sole entitlement in connection with EnerMech's exercise of its rights under this clause.

22. PERSONAL PROPERTY SECURITIES ACT

- (a) The Supplier acknowledges that if these Terms and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("**Security Interest**"), the Supplier must do anything (including amending these Terms or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that EnerMech considers necessary under, or as a result of, the PPS Law for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Law;
 - (ii) enabling EnerMech to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling EnerMech to exercise rights in connection with the Security Interest and these Terms.
- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Supplier agrees the following provisions of the PPS Act will not apply to the enforcement of the Security Interest: sections 95 (to the extent that it requires EnerMech to give a notice to the Supplier), 96, 121(4), 125, 130 (to the extent that it requires EnerMech to give a notice to the Supplier), 132(3)(d), 132(4), 135, 142 and 143.
- (c) The Supplier:
- (i) acknowledges that the Security Interests created under these Terms relate to collateral and all proceeds in respect of that collateral (until EnerMech is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement without EnerMech's prior written consent.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause 22(d) constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Supplier agrees to waive any right it may have, or but for this clause 22(e) may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

23. NOTIFICATION OF CLAIMS

- (a) Within 10 Business Days after the Supplier becomes, or ought reasonably to have become, aware of any Entitlement arising out of, or in connection with, these Terms or the Purchase Order (other than a claim for payment under clause 14), the Supplier must give EnerMech a prescribed notice under clause 23(b) or a notice of dispute under clause 26.
- (b) The prescribed notice is a written notice expressly specifying that the Supplier proposes to make a claim, and the direction or other fact, matter or circumstance on which the claim is based.
- (c) Within 5 Business Days after giving the prescribed notice in accordance with clauses 23(a) and 23(b), the Supplier must give EnerMech a written claim which must include full particulars of the direction or other fact, matter or circumstance on which the claim is based, the legal basis of the claim (including by reference to specific terms of these Terms), the facts relied upon in support of the claim, and reasonably complete details of any amount of money claimed and how it has been calculated.
- (d) If the Supplier fails to comply with this clause (including the timing and content requirements of this clause), then to the extent permitted by Law, EnerMech will not be liable on any claim by the Supplier and the Supplier will have no Entitlement and releases EnerMech from, and will be absolutely barred from making any claim against EnerMech, arising out of, or in connection with the direction or fact, matter or circumstance as the case may be.

24. PRIVACY

The Supplier must in respect of Personal Information obtained by it in respect of the supply of Goods and or Services comply with any Law which relates to the privacy of information about individuals and with which the Supplier must comply, including the Australian Privacy Principles under the *Privacy Act 1988* (Cth), any applicable code of practice and any applicable State or Territory privacy legislation.

The Supplier must ensure that for a period of 7 years following the later of the date on which all of the Goods have been supplied, and or the Services been provided, its employees, subcontractors and employees of its subcontractors:

- (a) immediately inform the Supplier and EnerMech in writing of any personal injury or illness that occurs or is suffered on any relevant Site or otherwise in connection with the supply of any Goods and or Services and undergo a medical examination by a medical practitioner of EnerMech's choosing if and when required by EnerMech in connection with such injury or illness; and
- (b) immediately provide to the Supplier and EnerMech any medical records or reports the worker has obtained or which are otherwise requested by EnerMech relating to an injury or illness referred to in paragraph (a) together with written consents to the relevant medical practitioner providing the record or report to EnerMech.

If EnerMech provides to the Supplier a collection statement in any form which may be required by the Australian Privacy Principles under the *Privacy Act 1988* (Cth), any other Law or by EnerMech from time to time, then the Supplier must ensure that such collection statement is provided to the relevant employee in connection with the collection of any personal (including sensitive) information as required by this clause. The Supplier will have no Entitlement against EnerMech arising out of, or in connection with, compliance with this clause.

25. PROPORTIONATE LIABILITY

The parties agree that, to the extent permitted by law, the operation of Proportionate Liability is excluded in relation to all and any rights of the Supplier, and all and any obligations and liabilities of EnerMech, under these Terms whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort (including negligence) or otherwise at law or in equity.

26. DISPUTE RESOLUTION PROCEDURE

26.1 Notice of dispute

If a dispute between EnerMech and Supplier arises out of or in connection with the supply of any Goods and or Services under in connection with these Terms, then either party may serve the other with a notice of dispute in writing, specifying:

- (a) the particularised assertion of fact giving rise to the entitlement (including reference to relevant provision(s) in these Terms);
- (b) the legal basis and cause of action;
- (c) the relief the party seeks; and
- (d) the calculation of any amounts of money or extensions of time claimed,

(Notice of Dispute).

26.2 Dispute resolution process

Any dispute between the Supplier and EnerMech must be referred:

- (a) initially for resolution by senior executives of EnerMech and the Supplier who must use their best endeavours to resolve the dispute within 10 Business Days of the giving of Notice of Dispute by a party; and
- (b) if the dispute is not resolved in accordance with (a) above, then either party may commence litigation in a court of competent jurisdiction.

26.3 Continued performance required

Despite the existence of a dispute, the Supplier must continue to perform its obligations.

26.4 Urgent interlocutory relief

A party may commence court proceedings relating to any dispute in connection with the supply of Goods and or Services at any time where that party seeks urgent interlocutory relief.

27. GST

27.1 Definitions

In this clause 'Supplier' means the entity providing the Goods and or Services.

All capitalised terms in this clause not otherwise defined have the same meaning as defined in the GST Act.

27.2 GST exclusive

The consideration for the supply of Goods and or Services according to these Terms does not include GST.

27.3 Taxable Supply

If a Supply made under or in connection with these Terms is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) the Supplier must give the Recipient a valid Tax Invoice for the Supply.

28. APPLICABLE LAW

These Terms are governed by, and construed in accordance with, the laws of Western Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Western Australia (and courts entitled to hear appeals from those courts).

29. EXCLUSION OF CONSEQUENTIAL LOSS

Notwithstanding anything to the contrary in these Terms, whether express or implied, whether under contract or at common law and notwithstanding any breach of contract, negligence or other breach of duty by or on the part of EnerMech or by any person or persons for whom EnerMech may be responsible, EnerMech shall not be liable to the Supplier in respect of any Consequential Loss.

For the purposes of this clause "Consequential Loss" means any, consequential or indirect loss or liability of any kind including any loss of revenue, loss of profits, loss of opportunity to make profits, loss of data, loss of rent, loss of reputation, loss of business, loss of business opportunity or any increase in expenses and costs, wasted expenditure, loss of use, fines, penalties or liquidated sums that the Supplier may be liable for under third party agreements, whether arising in contract, in equity, tort (including negligence) or by way of indemnity, under statute or otherwise at law and in each and every case whether arising directly or indirectly.

30. CONFIDENTIALITY

The Supplier must keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by EnerMech or its agents and any other confidential information concerning EnerMech's business or its equipment which the Supplier may obtain and the Supplier must restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Supplier's obligations to EnerMech and shall ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the Supplier. This clause does not apply where the confidential information:

- (a) was in the public domain prior to disclosure to the Company or has become part of the public domain through no fault or breach of the Supplier;
- (b) was in the Supplier's possession prior to it making any supply to or otherwise engaging with EnerMech and was not subject to obligations of confidentiality;
- (c) was given without restriction to the Supplier by a third party duly authorised or otherwise entitled to do so, and who did not receive the same in any way from EnerMech;
- (d) is required to be produced by order of a court or in any arbitration proceedings or under the requirements of any Law and/or by the rules of any relevant stock exchange; or
- (e) that the Supplier had EnerMech's prior written consent for disclosure.

31. SUBCONTRACTING

The Supplier must not subcontract, or allow a subcontractor to subcontract, any part of the supply of any Services or its obligations under these Terms without the prior written approval of EnerMech. Notwithstanding any approval by EnerMech to subcontract, the Supplier will be liable to EnerMech for the acts, defaults and omissions of its subcontractors as if they were those of the Supplier itself.

32. NON-WAIVER

Any waiver or relaxation by EnerMech partly or wholly of any provision of, or any right relating to, these Terms is valid only if in writing and signed by EnerMech. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to a particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision or right or any general waiver or relaxation.