

PURCHASE ORDER TERMS AND CONDITIONS

By accepting a signed Purchase Order, the Supplier agrees to the following terms and conditions:

1) PARTIES DUTIES

- a) The Supplier must supply the Goods to the Purchaser in accordance with the Purchase Order.
- b) In supplying the Goods, the Supplier must:
 - i) Use a high degree of skill, care and diligence;
 - ii) Make all reasonable enquiries of the Purchaser to ascertain its requirements;
 - iii) Work in accordance with any directions, instructions, schedules or budgets provided by the Purchaser;
 - iv) Keep confidential any information disclosed by the Purchaser or of which the Supplier becomes aware relating to the Goods or the project for which the Goods are to be used; and
 - v) Ensure the Goods comply with any applicable standards and laws.

2) ENTIRE AGREEMENT

The Purchase Order will become a binding agreement between the Supplier and the Purchaser upon the Supplier signing and returning an acceptance copy of the Purchase Order, or upon the Supplier otherwise acknowledging acceptance of the Purchase Order or commencing performance of the Purchase Order, whichever occurs first. The Purchaser's Purchase Order form, together with the specifications, drawings and documents referred to in the Purchaser's Purchase Order and these terms and conditions, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writings pertaining to the Purchase Order or the subject matter of the Purchase Order are superseded. Trade custom and/or trade usage is superseded by and will not be applicable

in the interpretation of the Purchase Order. The Supplier's terms and conditions will not apply to the supply of Goods to the Purchaser.

3) CORRESPONDENCE AND DOCUMENTS

The order number shown on the face of the Purchase Order must be shown on all documentation. All documentation must be sent to the addressees specified in the Purchase Order.

4) INVOICES AND PAYMENT

- a) The Supplier must issue invoices for the supply of Goods, and the Purchaser must make payment of those invoices, in accordance with the provisions of the Purchase Order. The Purchaser will not be required to pay for any Goods not delivered in accordance with the Purchase Order.
- b) Unless the Purchase Order provides otherwise, the Price is inclusive of all charges for packaging, packing, insurance and delivery of the Goods, GST and all other Taxes.
- c) If the Supplier is late in providing its invoices for the supply of the Goods, fails to provide any required number of copies of invoices or supporting documentation to the satisfaction of the Purchaser, or the invoices and packing lists do not reconcile in all respects, the Purchaser may withhold payment without penalty or loss of discount.
- d) Unless otherwise specified in a Purchase Order, Payment terms for Goods are 30 days from the date of receipt of a correctly rendered invoice.
- e) If GST is payable on a taxable supply made under the Purchase Order, the Supplier may recover from the Purchaser the amount of that GST at the same time as the Purchaser is required to pay for the Goods, provided that the Supplier provides the Purchaser with a valid tax invoice with its ABN, without which the Purchaser may be required to withhold an amount of tax in

accordance with relevant withholding tax legislation.

5) TITLE

The Supplier warrants that full title will be given to the Purchaser of all Goods supplied by the Supplier in performance of the Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, charges and encumbrances.

6) PASSING OF PROPERTY AND RISK

The property in any Goods or part of the Goods will pass to the Purchaser upon the earlier of the Purchaser's payment of the Supplier's invoice for the Goods or upon delivery to the specified delivery point. Goods which remain in the possession of the Supplier after payment will be at the risk of the Supplier (or the Supplier's vendors) and must be clearly identified as the property of the Purchaser. Risk will pass to the Purchaser upon receipt of such Goods at the specified delivery point.

7) QUALITY ASSURANCE

Where the Purchaser requires any aspect of the Goods to be designed, manufactured, tested, installed, or delivered to a specific standard, the Supplier must provide such information to the Purchaser as the Purchaser may require to verify compliance with the specific standard. The information must be provided before or at time of delivery of the Goods.

8) PACKAGING

The Supplier must ensure all Goods are properly packed and protected so that they will reach the Purchaser's ultimate destination without damage and in good working order.

9) ORDER MODIFICATIONS

The Purchaser reserves the right at any time to make changes to the Purchase Order or any part hereof. If such changes cause an increase or decrease in the Suppliers cost or an alteration in the delivery time, an equitable adjustment

must be agreed in writing by the Supplier and the Purchaser. The Supplier must not substitute any alternative Goods without the prior written consent of the Purchaser.

10) OWNERSHIP OF DRAWINGS AND OTHER TECHNICAL DOCUMENTATION

Drawings and other technical documentation supplied by the Purchaser, as well as drawings prepared from such documentation and all intellectual property therein will be the exclusive property of the Purchaser and must not be used for any other purpose, copied, or disclosed to a third party without the Purchaser's prior written consent. The Supplier is liable for, and must indemnify the Purchaser for any loss suffered by the Purchaser in consequence of failure to observe this clause.

11) INTELLECTUAL PROPERTY RIGHTS

a) Without limiting Clause 13:

i) The Supplier indemnifies the Purchaser, and must keep the Purchaser indemnified against any liabilities incurred or sustained by the Purchaser to a third party resulting from any actual or alleged infringement of any patent, copyrights, trademark or proprietary rights of the third party ("**Claim**") arising out of or cause by the supply or use of the Goods;

ii) Subject to paragraph (c) below, the Purchaser will allow the Supplier to conduct any litigation that may arise from a Claim and all negotiations for settlement of that Claim. However, the Supplier must not make any settlement or consent to any judgement, order or verdict against the Purchaser without the Purchaser's prior written consent.

iii) The Purchaser may, at the Suppliers expense, conduct its own defence of any litigation that arises from a Claim.

- b) If the Goods are held in any legal proceedings to constitute infringement of any proprietary rights of a third party, the Supplier must, at its own expense, either procure the Purchaser the right to sell and use the Goods; or replace or modify the same with equal but non-infringing Goods; or if approved by the Purchaser remove the Goods and refund the purchase price and the transportation and installation costs of the Goods.

12) WARRANTY

- a) The Supplier warrants to the Purchaser that all Goods covered by the Purchase Order will:
 - i) Conform with the standards, specifications, drawing and other description supplied or adopted by the Purchaser.
 - ii) Be new, fit for purpose and free from any defects, and of best material, design and workmanship; and
 - iii) Be sufficient for the purpose for which they are intended and capable of operating satisfactorily in the environment to which they are to be exposed including without limitation conditions of weather, locality, altitude and operational conditions such as exposure to dust, corrosive chemicals and fluids and rough handling.
- b) At the request of the Purchaser, the Supplier must promptly, at no cost to the Purchaser, either repair or replace (including prepayment of all packing and transportation costs) any Goods which within one year after being placed in regular use, must, in normal use and service and under proper operations, fail to conform with the above warranties of the Supplier or the requirements of the Purchase Order.
- c) If any Goods repaired or replaced, or associated services performed, fail to conform with the above warranties of the Supplier or the requirements of the

Purchase Order within one year after the date of completion of repair, replacement or re-performance, the Supplier must promptly, at the request of the Purchaser and at no cost to the Purchaser, repair, replace or perform any associated services in relation to the Goods to rectify the defect or failure.

- d) If the Supplier has been given a written notice by the Purchaser to rectify any defect or failure in relation to the Goods but has failed to take prompt and effective action to correct the defect or failure, the Purchaser may rectify the defect or failure at its own cost and the Supplier must indemnify the Purchaser in relation to all such costs incurred by the Purchaser.
- e) Nothing contained in the Purchase Order will be deemed to exclude, restrict or modify any condition, warranty, right or remedy which applies to the Purchase Order or is conferred upon the Purchaser under any law, including without limitations, under the *Trade Practices Act 1974* (Cth) or equivalent legislation applicable in the relevant Australian State or Territory.

13) INDEMNITY AND INSURANCE

- a) The Supplier indemnifies the Purchaser against any loss, damage, cost, expense suffered by, or liability for injuries (including death) to any person, and/or damage to and/or destruction of the property of any person, arising out of or in connection with any acts or omissions of the Supplier or its employees, contractors or agents, the Goods supplied by the Supplier pursuant to the Purchase Order, a breach of the Purchase Order by the Supplier, or the use by any third party of the Goods, whether suffered in contract, tort, under any statute (including the *Trade Practices Act 1974* (Cth) or the equivalent legislation applicable in the

relevant State or Territory of Australia), in equity or otherwise.

- b) The Supplier must effect and maintain adequate insurance to cover its liability under this clause 13 arising out of or in connection with the supply of Goods, including the following insurance:
- c) All risks property insurance for the Goods and specialised plant and equipment used in relation to the supply of Goods against the risk of loss, damage or destruction caused by insurable risks including theft, malicious damage, fire, lightning, storm and tempest for their full reinstatement or replacement value and including cover whilst the Goods and specialised plant and equipment are in transit or, in temporary storage during the course of transit; and
- d) A broad form public and products liability policy written on an occurrence basis with a limit of indemnity of not less than AU\$5 million for each occurrence and, with respect to products liability only, also in the aggregate for all occurrences during the policy period, which covers the Supplier's liability for loss of, damage to, or loss of use of property and the injury to, death of or illness of any person.
- e) The Supplier must provide evidence of such insurance to the Purchaser on request.

14) TERMINATION FOR DEFAULT

- a) In the event the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or being a company goes into liquidation (whether voluntary or otherwise), or if a receiver is appointed on account of the Supplier's insolvency, or any other act of insolvency occurs in relation to the Supplier, or in the event that the Supplier does not correct or, if immediate correction is not possible, commence and diligently continue action to correct, any default of the

Supplier to comply with any of the provisions or requirements of the Purchase Order within 14 days after being notified in writing of such default by the Purchaser, the Purchaser may, by written notice to the Supplier, without prejudice to any other rights or remedies which the Purchaser may have, terminate any further performance by the Supplier of the Purchase Order. In the event of such termination, the Purchaser may complete the performance of the Purchase Order by such means as the Purchaser selects and the Supplier will be responsible for any additional costs incurred by the Purchaser in doing so. Any amounts due to the Supplier for Goods delivered by the Supplier in full compliance with the terms of the Purchase Order prior to such termination will be subject to set-off against the Purchaser's additional costs of completing the Purchase Order and other damages incurred by the Purchaser as a result of the Supplier's defaults.

15) CANCELLATION FOR CONVENIENCE

- a) The Purchaser will have the right to cancel for its convenience further performance of all or any separable part of the Purchase Order at any time by written notice to the Supplier. On the date of such cancellation stated in the notice the Supplier must discontinue all work pertaining to the Purchase Order, place no additional orders, and preserve and protect materials on hand purchased for or committed to the Purchase Order, work in progress, and completed work both in its own and in the Supplier's plants pending the Purchaser's instructions and must dispose of the same in accordance with the Purchaser's instructions. The parties must promptly agree the amount of any payment to the Supplier which is to be

cancelled or amount to be refunded to the Purchaser, based on that portion of the Goods satisfactorily supplied to the date of cancellation plus reasonable and necessary expenses resulting from the cancellation as substantiated by documentation satisfactory to and verified by the Purchaser, less amounts previously paid by the Purchaser or entitled to be withheld by the Purchaser under the terms of the Purchase Order, the Supplier will not be entitled to any prospective damages because of cancellation. The amount paid by the Purchaser under this clause will in no event exceed the amount specified in the Purchase Order as payable for the Goods.

16) NOTIFICATION

- a) The Supplier must, as soon as it becomes aware of any circumstances that would prevent it being able to fulfil its obligations under the Purchase Order, promptly notify the Purchaser in writing and provide details in the notice of those circumstances and the impact on the Purchase Order. Upon receipt of the notice, the Purchaser, at its sole discretion, may:
 - i) Cancel all or any part of the Purchase Order
 - ii) Vary the Purchase Order, at no cost to the Purchaser to enable the Supplier to fulfil the Purchase Order

17) DELIVERY

- a) All Goods covered by the Purchase Order must be supplied at the delivery point by the delivery date specified in the Purchase Order.

18) ASSIGNMENT AND SUBCONTRACTING

- a) This Purchase Order must not be assigned by the Supplier without the prior written consent of the Purchaser. The Supplier must not subcontract all or part of the Good's without the Purchaser's prior written consent.

19) RESERVATION OF RIGHTS

- a) The making of or failure to make any inspection of or payment for the Goods must in no way impair the Purchaser's right to reject non-conforming or defective Goods, or otherwise affect the Supplier's obligations under the Purchase Order, nor constitute acceptance by the Purchaser of the Goods, notwithstanding the Purchaser's opportunity to inspect the Goods.

20) DISPUTE RESOLUTION

- a) Until the Purchaser and the Supplier have complied with this clause 20, neither of them may commence any action, bring any proceedings or seek any relief or remedy in a court, except for seeking interlocutory or equitable relief from a court in relation to a dispute arising out of or in connection with the Purchase Order ("**Dispute**").
- b) Where any Dispute arises, either the Purchaser or the Supplier may give notice in writing of the Dispute ("**Dispute Notice**") to the other party's Representative setting out the material particulars of the Dispute. The Representatives must act in good faith to try to resolve the Dispute quickly.
- c) If the Dispute has not been resolved within 14 days of the date the Dispute Notice is given (or any longer period the Representative may agree), either party may refer the Dispute to mediation or arbitration. In default of such referral, or the parties cannot jointly agree whether to submit the Dispute to mediation or arbitration, within 20 days of the date the Dispute notice is given, the Dispute will be referred to arbitration.
- d) If the Dispute is submitted to mediation and the parties do not, within 14 days (or any longer period the parties agree) after the Dispute is submitted to mediation, agree on:
 - i) A mediator and the mediator's compensation;

- ii) The procedure for the mediation; or
 - iii) The timetable of each step of the procedure, the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the Dispute is referred.
- e) If the Dispute is referred to arbitration, the arbitration will be effected under the *Commercial Arbitration Act 1985* (WA) by a single arbitrator agreed upon between the parties to the Dispute or, in default of agreement on the arbitrator within 10 days after such Dispute was referred to arbitration, then by a single arbitrator appointed in accordance with the *Commercial Arbitration Act 1985* (WA). The venue of the arbitration will be Perth, Western Australia or such other place as the parties to the Dispute agree in writing. The decision of the arbitrator shall be final and binding on the parties without appeal so far as the law allows.
- f) Unless the Representatives have first attempted to resolve the Dispute by negotiation, the Parties may not commence mediation or arbitration or court proceedings relating to the Dispute.
- g) If a Dispute is not resolved within 30 days after the date the Dispute Notice is given or, where a party has submitted the dispute to mediation or arbitration, 60 days after the date the Dispute Notice is given (or any longer period the Parties agree), either Party who has complied with this clause 20 may end this dispute resolution process and commence court proceedings in relation to the Dispute.

21) GOVERNING LAW

- a) Unless otherwise stated in the Purchase Order all matters arising out of or in connection with the Purchase Order will

be governed by the laws of Western Australia.

- b) Both the Supplier and Purchaser agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.

22) DEFINITIONS

- a) All defined terms used in the Purchase Order have the following meaning unless the contrary intention appears:
- b) **Goods** mean the goods, materials, service or works, as the case may be, that are to be supplied under the Purchase Order.
- c) **GST** has the meaning given to that term under *A New Tax System (Goods and Services Taxes) Act 1999* (Commonwealth of Australia).
- d) **Supplier** means the supplier specified in the Purchase Order.
- e) **Price** means the price specified in the Purchaser's Purchase Order form for the Goods described in the form.
- f) Purchase Order means (in order of priority):
 - i) The Purchaser's Purchase Order form for the Goods described in the form;
 - ii) These terms and conditions; and
 - iii) Any specifications, drawings and other documents referred to or attached to the Purchase Order.
- g) **Purchaser** means a party identified as the Purchaser in a Purchase Order and may include Perth Energy Pty Ltd ACN 087 386 445, Western Energy Pty Ltd ACN 102 984 252 or their respective related companies.
- h) **Representative** means a representative of the Purchaser, or a representative of the Supplier, designated for the purpose of resolving any Dispute under clause 20;
- i) **Taxes** means any taxes, fees, withholdings, imposts, levies or other charges of any nature whatsoever or whensoever imposed by any

governmental or other relevant authority together with any penalties payable in relation to the supply of the Goods.