



## STANDARD TERMS AND CONDITIONS

**EDL GROUP OPERATIONS PTY LTD** ACN 055 555 416 of Level 6, Waterfront Place, 1 Eagle Street, Brisbane, Queensland, Australia ("EDL")

EDL requires that the Supplier supply EDL with the goods (the "Goods") and/or services (the "Services") set out in the relevant numbered Purchase Order ("Purchase Order") and Specification of Goods and Services ("Specification") (if any) in accordance with these Standard Terms and Conditions ("Terms and Conditions") and the Supplier has agreed to provide the Goods and/or Services on these Terms and Conditions:

### 1. Terms of Agreement

- 1.1 This document is EDL's offer to the Supplier for the Supplier to supply the Goods and/or Services described in the relevant Purchase Order and Specification (if any) to EDL on these Terms and Conditions. Acceptance of this document by the Supplier will constitute a binding contract between EDL and the Supplier to supply the Goods and/or Services set out in the Specification on these Terms and Conditions and the terms of the relevant Purchase Order and the Specification (if any) (this "Agreement").
- 1.2 This Agreement is the entire agreement between the parties relating to its subject matter.
- 1.3 The Supplier will not provide the Goods and/or Services to EDL without obtaining a numbered Purchase Order from EDL.
- 1.4 The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the Goods and/or Services.
- 1.5 If the Supplier is unwilling or unable to accept the offer made by EDL in this document on these Terms and Conditions, the Supplier will immediately contact EDL and advise in writing of any variations it requires to be made for the acceptance or rejection in writing by EDL.
- 1.6 If the Supplier proceeds with the manufacture or supply of the Goods and/or Services without first requesting or receiving EDL's written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted these Terms and Conditions and the terms of the relevant Purchase Order and Specification (if any).
- 1.7 No addition to or modification of this Agreement will bind either of the parties unless it is made in writing and signed by both of them.
- 1.8 It is acknowledged that, as a matter of commercial convenience, the Supplier may from time to time provide EDL with transportation or delivery information or other details concerning the Goods and/or Services using the Supplier's forms. No such forms or printed or standard terms and conditions contained on any such form will or will be deemed to change, add to, amend or modify this Agreement, regardless of whether or not EDL signs any acknowledgement copy of the same.

### 2. Warranties

- 2.1 The provisions of Schedule 2, Chapter 3, Part 3-2, Division 1 of the *Competition and Consumer Act 2010* (Cth) (as amended from time to time) will form part of this Agreement as if the same were set out in full herein with the effect that they would have if:
  - (a) "EDL " was substituted for "consumer"; and
  - (b) The "Supplier" was substituted for the words "a corporation", "a supplier" or "the supplier" (as applicable), wherever appearing therein.
- 2.2 In addition to the provisions of clause 2.1, the Supplier warrants that the Goods:
  - (a) will be of merchantable quality;
  - (b) will be manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of EDL given for the purpose of this Agreement;
  - (c) will be free from defects in design, materials and workmanship;
  - (d) do not and will not infringe the intellectual property rights of any third party;
  - (e) will comply with the requirements of any relevant statutes, regulations or legally applicable standards;

- (f) will be new on delivery to EDL; and
  - (g) will be in accordance with and will perform in accordance with the Supplier's specifications.
- 2.3 In addition to the provisions of clause 2.1, the Supplier warrants that the Services:
- (a) will be performed in accordance with this Agreement;
  - (b) will be of merchantable quality;
  - (c) do not and will not infringe the intellectual property rights of any third party; and
  - (d) will comply with the requirements of any relevant statutes, regulations or legally applicable standards.
- 2.4 The warranties in clauses 2.1, 2.2 and 2.3 are continuing warranties and do not merge on execution, performance or completion of this Agreement.
- 2.5 The Supplier agrees to extend the warranties in this Agreement to subsequent purchasers of the Goods which are related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) of EDL, provided that the liability of the Supplier in relation to claims of the subsequent purchasers will not exceed or be different than those set out in this Agreement.
- 2.6 Without limiting any other provision of this Agreement, (including this clause 2 or any other provision conferring rights or remedies on EDL):
- (a) the Supplier agrees to provide EDL or procure the provision to EDL of the manufacturer's warranty applicable to the Goods; and
  - (b) the Supplier must, if EDL requires, produce written evidence of the assignment to EDL of the manufacturer's warranty in respect of the Goods, or such other evidence sufficient to satisfy EDL that it is legally entitled to the benefit of that manufacturer's warranty.
- 2.7 EDL relies on the Supplier's skill and judgment. The Supplier undertakes to advise EDL whenever the Supplier believes that compliance with a specification of EDL's would render the Goods and/or Services unsuitable for EDL's requirements.
- 2.8 All Goods and/or Services delivered or performed by the Supplier will be subject to acceptance testing of them by EDL and any Goods and/or Services tendered, offered, delivered or performed which, in the opinion of EDL, do not comply with this Agreement may be rejected by notice in writing to the Supplier.
- 2.9 EDL may undertake such acceptance testing in respect of the Goods and/or Services as it thinks fit.
- 2.10 (a) Any Goods rejected by EDL pursuant to clause 2.8 must be removed by and at the expense of the Supplier as soon as practicable after notice is given to the Supplier of their rejection. If the rejected Goods are not removed within that time, EDL may either return them to the Supplier at the Supplier's expense in all respects, or store them at the Supplier's expense in all respects. EDL will not be liable for any damage to or loss of the Goods whilst they are in transit to the Supplier, or whilst they are in storage.
- (b) EDL will generate a further Purchase Order when replacement Goods and/or Services are required to replace Goods and/or Services rejected pursuant to clause 2.8. The Supplier must not replace any Goods and/or re-perform Services rejected by EDL unless the Supplier has received a Purchase Order for the replacement Goods and/or Services. In the event that EDL issues such a Purchase Order for replacement Goods and/or Services then such Purchase Order is issued (and the replacement Goods are supplied and/or Services performed) without prejudice to any right or remedy that EDL has by reason of the rejected Goods and/or Services failing to comply with this Agreement. EDL may require the Supplier to refund any purchase price paid by EDL for the Goods and/or Services and recompense EDL for any loss suffered by EDL in respect of such rejected Goods and/or Services.
- (c) Goods and/or Services (or any portion thereof) or replacement Goods and/or Services which have been rejected must not be offered again for acceptance under this Agreement.
- 2.11 EDL's acceptance of the Goods and/or Services will be without prejudice to any rights or remedies EDL may have arising from any breach by the Supplier of this Agreement. In particular:
- (a) EDL may reject the whole or any portion of the Goods and/or Services if it becomes aware (after accepting them) that they do not comply with this Agreement; and
  - (b) the Supplier must not replace those Goods and/or perform Services under this Agreement unless

a new Purchase Order is generated in accordance with clause 2.10(b).

### 3. Price and Payment

- 3.1 The price payable for Goods and/or Services will be that set out on the Purchase Order. If the Purchase Order is not provided to the Supplier at the time of formation of this Agreement in respect of some or all of the Goods and/or Services, then the price on any subsequently issued Purchase Order will be determined in accordance with the Specification.
- 3.2 The price set out in the Purchase Order is the amount payable by EDL (subject to this Agreement) under this Agreement excluding GST but including all other taxes, duties, charges, levies and fees payable on or in respect of the Goods and/or Services. EDL will not be liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the Due Date of the Goods and/or Services involving such increased cost or charges or price. In this Agreement, "GST" means a goods and services tax or similar value added tax imposed by "A New Tax System (Goods and Services Tax) Act 1999" (and any legislation substituted for, replacing or amending that Act) ("the Tax Act").
- 3.3 The price specified in the Purchase Order will include packaging charges. If the Specification states that payments will be made by way of milestones, then EDL will pay the Supplier when EDL determines that the relevant milestone set out in the Specification has been satisfactorily achieved.
- 3.4 The Supplier must furnish EDL with an invoice which complies with the Tax Act:
- (a) for Services - monthly in arrears specifying EDL's Purchase Order number, setting out the amount the Supplier asserts is payable by EDL, and the basis for its calculation.
  - (b) for Goods - in respect of each consignment of Goods delivered:
    - (i) as soon as practicable after and in any event within seven (7) days of each delivery of the Goods; and
    - (ii) specifying EDL's Purchase Order number, the amount due to the Supplier, the date of delivery of the Goods to which the invoice relates, a description (including the quantity) of the Goods delivered (by item if applicable) and the Supplier's address for payment.
- 3.5 If the Supplier does not provide its Australian Business Number on any invoice issued pursuant to this Agreement, then EDL may withhold 48.5% of the payment (or such other percentage as applies from time to time) and remit it to the Australian Taxation Office as required by legislation.
- 3.6 Unless otherwise agreed between the Supplier and EDL in writing, amounts payable by EDL pursuant to an invoice rendered in accordance with this Agreement will be paid by EDL by no later than 30 days from the end of the month of the date of invoice provided that the Goods and/or Services have been accepted by EDL and that the Supplier has complied with this Agreement in all respects. The Accounts Payable section of EDL must receive all invoices on the 25th day of each month in order for payment to be made in accordance with this clause. In the event that EDL has a bona fide dispute in relation to the contents of any invoice issued by the Supplier then EDL will bring notice of such dispute to the attention of the Supplier within 14 days of receipt of the invoice. EDL will not be required to pay the invoice until the parties have reached agreement in relation to the dispute or until the Supplier will have obtained an arbitral award against EDL in respect of that amount in accordance with clause 15 (whichever occurs first). In addition EDL may withhold payment of the amount charged for Services performed, or any instalment of that amount, if the Supplier's performance of the Services is unsatisfactory, or if the Supplier is in breach of this Agreement.
- 3.7 Notwithstanding any other provision of this Agreement, EDL shall be entitled to withhold from any payment, transaction, or non-cash benefit or consideration otherwise due to the Supplier under or in connection with this Agreement, any Withholding Tax (which term includes any tax, duty, levy or similar which EDL as the Purchaser is required or directed to deduct and/or remit to a tax collecting entity, including the Australian Taxation Office, and it specifically includes any amount to be held, withheld or dealt with in a similar manner in relation to Regulation 44D of the Taxation Administration Regulations 1976 (Cth), and/or any "pay as you go" tax law).

### 4. Delivery

- 4.1 The Goods will be delivered and/or the Services performed on the date specified in the Purchase Order (the "Due Date"). EDL may require that all Goods ordered for a specified Due Date be delivered at the same time or it may accept delivery in part from time to time such acceptance to be completely within EDL's discretion. The Supplier must perform Services for EDL by no later than Due Date.
- 4.2 Subject to clause 5.2 and subject to EDL's right to reject any defective Goods and/or Services, title will pass to EDL on delivery. The Goods will be deemed to have been delivered only when they have been made available and loaded or unloaded (as applicable) at the nominated delivery point in accordance with

the requirements of this Agreement.

- 4.3 The Supplier will pack the Goods to ensure that no loss or damage results from weather or transportation.
- 4.4 EDL will specify the method of delivery required at the time of placing of the Purchase Order. Where the Supplier arranges transportation of the Goods, regardless of whether the carrier is nominated by EDL or not, risk remains with the Supplier until the Goods have been delivered.

## 5. Timeliness

- 5.1 Time is of the essence in the performance of the obligations under this Agreement. The Supplier acknowledges that EDL may return part or all of any shipment of Goods received outside the Due Date and charge the Supplier with any loss or expense sustained as a result of the Supplier's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the Goods, the Supplier will immediately notify EDL of the circumstances and propose a revised delivery date which EDL may elect to agree or not agree to in its own discretion. The exercise by EDL of its rights under this clause will be without prejudice to any claim for damages or other rights it may have against the Supplier.
- 5.2 The Supplier acknowledges that EDL may terminate this Agreement if the Supplier does not provide the Goods and/or Services on the Due Date and EDL will not be liable to pay for any Goods and/or Services which are delivered or performed outside of the Due Date (unless the parties have agreed in writing to extend the date). The Supplier will submit a programme and schedules to EDL in the form and frequency advised.

## 6. Inspection

- 6.1 On request and after being given reasonable notice, the Supplier will arrange for EDL's representative to have access to the premises or processes of the Supplier (or any of the Supplier's sub-contractors which EDL has permitted to undertake works pursuant to this Agreement) for the purposes of inspecting any materials, work in progress or finished Goods being supplied to or manufactured for EDL.
- 6.2 Such inspection will not be deemed to be acceptance by EDL of the materials, work or Goods inspected or affect any obligation of the Supplier under this Agreement.

## 7. Indemnities

The Supplier will indemnify and keep indemnified EDL from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by EDL and arising directly or indirectly out of or in connection with:

- (a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods and/or Services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
- (b) the failure of the Goods and/or Services to conform to or fulfil any term or condition of this Agreement; and
- (c) the Supplier's performance or non-performance (including the performance or non-performance of any of the Supplier's employees, contractors or agents) of this Agreement including claims for non-compliance with any law, statute, regulation, code of practice, standard, ordinance, other law, or for negligence, nuisance, personal injury, death, property loss or damage, and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the wilful misconduct of EDL or EDL's employees or agents.

## 8. Notices

Any notice in connection with this Agreement will be deemed to be sufficiently given if sent by facsimile to the facsimile number provided by each party for that purpose, or delivered to either party personally or by forwarding the same to either party by pre-paid letter post, or addressed to or delivered at the registered office of the relevant party. E-mail notifications will be valid if they can be demonstrated to the satisfaction of EDL to be reliable, accurate and authentic.

## 9. Site Work

- 9.1 Where the Supplier, its employees, contractors or agents:
- (a) provide work in connection with the installation or fitting of the Goods,
  - (b) perform Services; or

- (c) enter upon EDL's premises,

the Supplier will, and will procure that its employees, agents and contractors will:

- (d) obtain all relevant information, including with respect to the location, local conditions and local authority and other statutory authorisations;
- (e) perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;
- (f) perform all work so as not to impede, or interfere with any activities being carried out on EDL's premises and further, the Supplier must comply with all of EDL's directions, procedures and policies relating to occupational health and safety (including drug and alcohol consumption), security, environment, anti-discrimination and other site specific requirements whenever it is on EDL's premises;
- (g) comply with all statutory requirements, regulations, codes of practise and other laws, including the *Work Health and Safety Act 2011* (Qld) (or equivalent), similar legislation, safety requirements, the wearing of safety gear and EDL's manuals and policies, which will be the Supplier's responsibility to obtain from EDL;
- (h) provide at their own expense (except where otherwise specified) all labour, tools, equipment and material necessary to complete the work;
- (i) enter upon EDL's premises at their own risk; and
- (j) comply with any reasonable directions given by EDL, including a direction for any person to leave the EDL premises immediately.

9.2 EDL will supply the Supplier with any relevant information in EDL's possession upon request of the Supplier but the Supplier will at all times use its skill and expertise to independently assess such information and EDL will not be liable for any inaccuracy or insufficiency of any information supplied by EDL.

## **10. Defects Liability Period**

- 10.1 The Supplier will rectify any omission or defect in the Goods and/or Services under this Agreement existing at the date of completion or which becomes apparent prior to the expiration of the Defects Liability Period.
- 10.2 Unless otherwise agreed, the Defects Liability Period will be a period of eighteen (18) months from the date of delivery of Goods or completion of performance of Services or twelve (12) months from when EDL obtains first beneficial use of the Goods and/or Services, whichever occurs first.
- 10.3 If the rectification is not commenced or completed as required by EDL, EDL may have the rectification carried out at the Supplier's expense but without prejudice to any other rights EDL may have, and the cost of rectification incurred by EDL will be a debt due from the Supplier.

## **11. Insurance**

- 11.1 The Supplier warrants that it has obtained and maintains throughout the duration of this Agreement (including any Defects Liability Period) all insurance cover required by law and by this Agreement including but not limited to the following:
  - (a) Public and products liability insurance with a minimum limit of not less than twenty million dollars (\$20,000,000) for any one occurrence;
  - (b) Workers compensation and employers liability insurance at common law in an amount not less than fifty million dollars (\$50,000,000) for any one occurrence or under any statute or other legislative provision; and
  - (c) Motor vehicle third party injury and property damage with a minimum limit of not less than ten million dollars (\$10,000,000) for any one occurrence.
- 11.2 As and when requested by EDL, the Supplier will provide copies of the policies of insurance the Supplier is required to effect and evidence to EDL's satisfaction of their currency.
- 11.3 If the Supplier fails to effect or maintain any such insurance as specified above, EDL may effect or maintain such insurance and recover from the Supplier as a debt or set off against any amount payable to the Supplier, any premium so paid by EDL.

## 12. Termination

- 12.1 EDL may forthwith terminate this Agreement by notice in writing if the Supplier is in default of any term or condition of this Agreement.
- 12.2 EDL may, without prejudice to any other rights or remedies hereunder, forthwith terminate this Agreement by notice in writing if the Supplier:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
  - (b) is unable to pay its debts as and when they fall due;
  - (c) has an administrator appointed over all or any of its assets or undertaking;
  - (d) has a controller, manager or similar officer appointed to all or any of its assets or undertaking; or
  - (e) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any such application, order or proceeding is not withdrawn within 21 days.
- 12.3 If Goods to be supplied under this Agreement are of standard stock of the Supplier, then EDL may terminate this Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of Goods without further obligation hereunder, except payment (subject to the other terms hereof) for the Goods shipped or delivered prior to termination.
- 12.4 If this Agreement requires Goods to be manufactured to EDL's specification or requires the Supplier to install or fit Goods, then at any time prior to completion of the work to be performed in fulfilment of this Agreement, EDL may terminate this Agreement upon written notice to the Supplier, and upon receipt of such notice the Supplier will stop all work hereunder, except as may be otherwise directed by EDL. Upon termination under this clause 12.4, EDL will pay to the Supplier an amount equal to:
- (a) the completed pro-rata amount of the contract price; and
  - (b) five percent (5%) of the amount calculated in paragraph (a).
- The amount described in paragraph (a) will be agreed by both parties and will reflect the amount completed or committed at the date of termination provided that at such date the Supplier is not in breach of any of these terms or conditions, and provided further that such amount will not exceed the total contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.
- 12.5 If Services are to be supplied under this Agreement, then EDL may terminate this Agreement upon written notice to the Supplier, so far as it relates to any Services which have not yet been rendered without further obligation hereunder, except payment (subject to the other terms hereof) for the Services rendered prior to termination.
- 12.6 Termination of this Agreement does not affect any accrued rights or remedies of either party.

## 13. Breach

- 13.1 If the Supplier breaches this Agreement, or if it advises EDL that it is not or will not be able to perform all or any of its obligations under this Agreement, then without limiting any other right or remedy EDL may have, EDL may:
- (a) terminate this Agreement by notice in writing to the Supplier; and/or
  - (b) acquire the Goods and/or Services (or their nearest reasonably available substitute) from a third party or third parties.
- 13.2 Indemnity for breach:
- (a) Any additional cost to EDL of acquiring substitute Goods and/or Services from a third party will be an amount due by the Supplier to EDL immediately upon EDL making demand for that amount.
  - (b) The Supplier must pay to EDL the whole of any cost or expense, loss or damage suffered or incurred by EDL as a result of the Supplier's breach of this Agreement.

## 14. Assignment

- 14.1 The Supplier will not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining EDL's prior written consent which may be granted unconditionally or upon such conditions as EDL thinks fit, and may be withheld by EDL in its absolute discretion. The appointment of subcontractors by the Supplier will not relieve the Supplier from any liability or obligation under this Agreement. The Supplier will be liable for the acts and omissions of subcontractors and employees, officers, agents and contractors of subcontractors as if they were acts and omissions of the Supplier. The Supplier will ensure that its subcontractors comply with the terms of this Agreement.
- 14.2 EDL may assign, transfer or otherwise dispose of the whole or any part of its right, title and interest in, to and under this Agreement to:
- (a) a related body corporate, bank, financial institution or other lender; or
  - (b) to an assignee who in the reasonable opinion of EDL is technically and financially capable of performing the obligations and meeting the liabilities of EDL under this Agreement.

## 15. General

- 15.1 This Agreement is confidential to EDL and neither its terms nor any particulars or any information relating to it or supplied to the Supplier by EDL may be published or disclosed to any third party by the Supplier (except to the extent necessary for the purposes of this Agreement) without EDL's prior written consent. This obligation of confidentiality will survive the termination of this Agreement.
- 15.2 This Agreement is governed by and is to be construed according to the laws of Queensland, Australia and the parties will submit to the jurisdiction of the Courts of Queensland, Australia and any courts which may hear appeals from those Courts in respect of any dispute or proceedings in connection with this Agreement.
- 15.3 The Supplier agrees that, for the purposes of section 55 of the Property Law Act 1974 (Qld) ("PLA"), each related body corporate (as defined in the Corporations Act 2001 (Cth)) of EDL Group Operations Pty Ltd is a 'beneficiary' of EDL and may accept the benefit of this Agreement in accordance with the requirements of the PLA.
- 15.4 A party will effectively waive its rights under this Agreement only if it waives those rights in writing signed by that party.
- 15.5 The Supplier performs all work hereunder as an independent contractor and not as an agent or employee of EDL.
- 15.6 In interpreting this Agreement, a singular word includes the plural, and vice versa.
- 15.7 The invalidity or unenforceability of any part or provision of this Agreement does not affect the enforceability of any other part or provision of this Agreement and the invalid or unenforceable part is severable.

## 16. WKPP Special Conditions

- 16.1 Notwithstanding any other provision of this Agreement, the Supplier agrees that EDL is entitled to assign or transfer or novate its rights and interests (including the benefits of warranties) in this Agreement to any or all of Regional Power Corporation (trading as Horizon Power), EDL NGD (WA) PTY LTD ABN 35 070 941 721, EDL LNG (WA) PTY LTD ABN 92 064 437 789, and any financial institution or institutions providing financial accommodation to any of them (and each of their successors and assigns) by either giving written notice to the Supplier, or upon the Supplier receiving written notice to this effect issued by EDL NGD (WA) PTY LTD ABN 35 070 941 721 and/or EDL LNG (WA) PTY LTD ABN 92 064 437 789.
- 16.2 The Supplier irrevocably consents to each such assignment, transfer and novation as referred to in the preceding clause.
- 16.3 These WKPP Special Conditions apply if the Supplier is providing goods or services or is performing work for EDL directly or indirectly in connection with EDL's West Kimberley Power Project.

[end of terms and conditions]