

## TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1. Sale and Purchase

EEI will sell the Goods and the Customer will purchase the Goods on and subject to the terms and conditions of the Agreement.

### 2. Purchase Orders

- (a) An Agreement for the purchase of the Goods does not come into existence until acceptance in writing of a Purchase Order by EEI.
- (b) A Purchase Order must:
  - (1) be signed by the Customer and have a valid purchase order number;
  - (2) describe the Goods required;
  - (3) specify the applicable Price.
- (c) A Purchase Order may not amend, add to or delete any of the provisions of these terms and conditions or the Offer Letter to the intent that any terms and conditions of the Customer contained in the Purchase Order will be void and of no effect.
- (d) Subject to clause 3(a), a Purchase Order cannot be revoked without the consent of EEI.

### 3. Termination

- (a) The Customer may terminate the Agreement if EEI at any time:
  - (1) breaches any terms and conditions of the Agreement and fails to remedy such breach within a reasonable period of time (which shall be no less than seven (7) days) after receiving notice, or otherwise becoming aware, of the breach; or
  - (2) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts.and such termination shall be effective 5 days from the date of a notice from the Customer pursuant to this clause 3.
- (b) EEI may terminate the Agreement if the Customer at any time:
  - (1) breaches any terms and conditions of the Agreement and fails to remedy such breach within a reasonable period of time (which shall be no less than seven (7) days)

after receiving notice, or otherwise becoming aware, of the breach;

- (2) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or
- (3) refuses or neglects to take delivery of or collect (if applicable) the Goods described in the Agreement and does not remedy that failure within seven (7) days of notice from EEI,

and such termination shall be effective 5 days from the date of a notice from EEI pursuant to this clause 3.

### 4. Price Validity

Unless otherwise stated in the Offer Letter, the Price is valid for 30 calendar days from the date of the Offer Letter. Following that 30 day period, or the validity period in the Offer Letter, EEI is entitled but not obliged to vary the Price and revise the offer.

### 5. Price Variation

Unless otherwise stated in the Offer Letter EEI may, with the consent of the Customer, vary the Price to reflect any change in costs (including, without limitation, changes in price required by the Supplier) incurred by EEI after the date of the Offer Letter or after the date of the Agreement.

### 6. Variations to Scope of Agreement

The Price specified in the Offer Letter is based upon:

- (a) the information provided by the Customer to EEI for the purpose of the Agreement including, where applicable, plans, specifications (including standards), schedules, and nominated quantities;
- (b) delivery arrangements in accordance with clause 10 or, if the Offer Letter requires the Customer to collect the Goods, clause 11;

and any variations to the information provided by the Customer and/or the delivery arrangements shall be a variation of the Agreement entitling the Parties to a reasonable adjustment of the Price to either (as applicable) reimburse EEI for any reasonable additional costs incurred, or pass on to the Customer any cost savings received by EEI,

directly as a result of the variation.

## 7. Specifications

Where EEI supplies Goods according to the Customer's specifications, to the extent permitted by law:

- (a) the Customer warrants that the specifications are fit for their intended purpose and, if materially complied with, allow EEI to provide Goods which are fit for their intended purpose and comply with the requirements of the Agreement;
- (b) EEI will not be responsible if the Goods are not fit for purpose or do not comply with the requirements of the Agreement as direct result of a breach of the Customer's warranty in clause 6(a); and
- (c) the Customer shall provide to EEI accurate information sufficient to enable EEI to provide the Goods specified.

## 8. Payment

- (a) The Customer will pay EEI the Price in respect to the purchase of the Goods in accordance with the terms for payment set out in this clause 8.
- (b) Time for payment of the amount due to EEI shall be of the essence in the Agreement and the amount due and payable shall include the Price as may be varied in accordance with the Agreement, and all relevant taxes (other than EEI's income tax), imposts, and charges which EEI is required to pay under the Agreement or at law in connection with the sale of the Goods to the Customer (but excluding any taxes, imposts or charges incurred by EEI due to its failure to comply with a law or negligence).
- (c) The Customer shall pay the full amount set out in the relevant invoice within 30 calendar days of the invoice date unless otherwise agreed between the Parties in writing.
- (d) Where an invoice is not paid in accordance with clause 8(c), the Customer must pay in addition to the amount of the invoice an amount of interest calculated on the unpaid invoice amount (excluding any interest amount) on a daily basis from the due date for payment until the date of payment at the rate which is 2% higher than the Reserve Bank of Australia Cash Rate.
- (e) At EEI's absolute discretion, EEI may issue one invoice with the total interest payable or interim

invoices at the end of each calendar month setting out details of the amount of interest due and payable by the Customer at the date of the relevant invoice, in accordance with clauses 8(c) and 8(d) above.

- (f) Payment shall be in Australian currency unless otherwise agreed in writing.

## 9. GST

### Consideration is GST Exclusive

Unless specifically described in the Agreement as 'GST inclusive', the consideration to be paid or provided for a supply made under or in connection with the Agreement (including but not limited to the Price) does not include any amount on account of GST.

## 10. Delivery

- (a) Where the Offer Letter or an accepted Purchase Order includes a Delivery Date EEI will use its best endeavours to deliver the Goods in accordance with that date or such other date as agreed between the Parties in writing provided however that EEI will not be liable for any loss or cost sustained by the Customer due to delay in delivery as a result of Force Majeure.
- (b) The Customer shall not be relieved from any obligation to accept or pay for Goods by reason of any delay in delivery due to an act or omission of the Customer or any of its Personnel.
- (c) Where the Customer improperly refuses or denies delivery, the Customer's obligation to pay for the Goods, as set out in clause 8 remains unchanged. The Customer shall also pay all additional, reasonable, freight, holding or handling and storage charges incurred by EEI to deal with any Goods improperly refused, denied or uncollected.
- (d) EEI may, with the consent of the Customer (which shall not unreasonably be withheld), deliver by instalments.
- (e) Additional reasonable costs incurred by EEI in delivering the Goods:
  - (1) outside the hours of 7:30am to 4:00pm weekdays (excluding public holidays); or
  - (2) due to delays at the Site or an unsuitable Site,

shall be at the Customer's expense and be a variation to the Price except to the extent that delivery at the times in paragraph (1) above, the

Site delays or the Site unsuitability (as applicable) were caused by an act or omission of EEI.

- (f) The Customer warrants that the Site facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations.
- (g) The Customer is responsible for the unloading of the delivered Goods.

## 11. Collection

- (a) The Customer may, if permitted by the Offer Letter or otherwise with EEI's prior consent, arrange to collect Goods (or an instalment of Goods) at the collection time and location agreed by EEI, in lieu of EEI delivering those Goods to the Customer under clause 10.
- (b) If the Customer arranges to collect Goods (or any instalment of Goods) from EEI:
  - (1) for the purposes of the Agreement:
    - (A) delivery occurs when EEI makes the Goods available for collection and loading by the Customer at the agreed collection location;
    - (B) the Customer must accept delivery by collecting and loading the Goods at the agreed collection location by the agreed collection time; and
    - (C) all references in the Agreement to 'deliver', 'delivery' and 'delivered' will be interpreted accordingly;
  - (2) the Customer will ensure it has an authorised representative attend collection who shall check prior to loading that the information shown on the delivery docket corresponds with the Customer's order;
  - (3) the Customer loads the Goods entirely at its own risk (including risk as to injury or death to any person or damage to Goods or other property) except to the extent any injury, death or damage is caused by EEI's negligence or breach of the Agreement;
  - (4) if EEI's Personnel assist with loading:
    - (A) they do so at the request of the Customer; and
    - (B) such assistance is provided entirely at the Customer's risk in all things except to the extent any injury, death or damage is caused by EEI's negligence or failure to materially comply with the Customer's request or directions.

## 12. Heavy Vehicles

If any aspect of the Customer's collection of Goods under clause 11 involves the use of heavy vehicles on roads (**HV Activities**), the Customer:

- (a) must comply and ensure its Personnel and use reasonable endeavours to ensure that any of EEI's Personnel who assist the Customer with loading comply with the COR Law applicable to those HV Activities;
- (b) warrants and undertakes that it is familiar with and has the approvals, capability and resources necessary to comply with the COR Law;
- (c) whenever EEI reasonably requests, will:
  - (1) provide EEI with evidence of the Customer's compliance with law (including the COR Law) in respect of HV Activities or any other information which EEI reasonably requires in order for EEI to comply with any applicable law relating to HV Activities; and
  - (2) allow EEI and its auditors and advisers to audit the Customer's HV Activities, and provide full access at all reasonable times and on reasonable notice to the Customer's premises, Personnel, vehicles, equipment, software, records and systems relevant to the HV Activities.

## 13. Title

- (a) Title in the Goods shall not pass to the Customer until payment in full in cleared funds has been received by EEI for the purchase price of the Goods.
- (b) If payment is overdue in whole or in part, EEI may (without prejudice to any of its other rights) recover or recall the Goods. The Customer's right to possession of the Goods shall cease if EEI recalls or recovers the Goods due to such overdue payments
- (c) EEI may without limiting any of its rights for the purpose of recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the Goods.

## 14. Risk

Risk in the Goods shall pass to the Customer upon delivery.

## 15. Defects

- (a) The Customer shall ensure it has an authorised representative at the Site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order.

- (b) Notice of any visible defects shall be given to EEI in writing within 7 days following delivery.
- (c) If notice in accordance with clause 15(b) is not given, the Goods shall be deemed to be accepted by the Customer and free from visible defects identifiable upon reasonable inspection.
- (d) EEI shall have the right to inspect on Site (or wherever else the Goods are located) any Goods notified by the Customer as being defective, within 7 days' time from notification by the Customer and until such inspection is completed, the Goods shall not be installed.
- (e) Any reasonable costs and expenses incurred by EEI where it is subsequently found that the Goods were not defective shall be reimbursed by the Customer on receipt of a valid invoice from EEI.

## 16. Testing and Reporting

- (a) Where the Customer requires the Goods to be subject to special testing or inspection the Customer shall pay all reasonable costs of and associated with such testing or inspection.
- (b) Any inspector or other person attending EEI's premises on behalf of the Customer shall be authorised in writing by the Customer.
- (c) The Customer shall provide EEI with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to the Goods.

## 17. Warranty

To the extent permitted under law:

- (a) The Customer acknowledges and agrees that the Goods supplied in accordance with the Agreement are manufactured by a third party and accordingly:
  - (1) If a product supplied in accordance with the Agreement is defective, then the liability of EEI shall be limited to the warranty provided by the manufacturer of the Goods except to the extent the defect has been caused by EEI's negligence or breach of the Agreement; and
  - (2) EEI shall not be liable under any circumstances for the removal of any defective Goods or for the re-installation of any Goods or for any consequential losses or loss of profits.
- (b) EEI is not liable for damage, defects or failure of the Goods caused by:

- (1) use of the Goods by the Customer in other than their normal or customary manner in accordance with the applicable documentation;
  - (2) loading or transportation undertaken by the Customer or, except to the extent that EEI is negligent or fails to materially comply with the Customer's request or direction, by EEI at the request or direction of the Customer;
  - (3) a failure or malfunction of interconnected equipment or related equipment on which the Goods rely, lack of or untimely provision of essential routine maintenance of the Goods due to any decision of the Customer, neglect by the Customer or its agents, or environmental conditions (including electromagnetic interference beyond the limits indicated by Supplier), in each case in a manner which is not contemplated by the specifications;
  - (4) incorrect, inappropriate, faulty or defective alterations, modifications or repairs, use of non-Supplier or non-EEI approved parts in the Goods, or the combination or interfacing of the Goods, in each case in a manner not in compliance with the specifications;
  - (5) installation performed by or on behalf of anyone other than Supplier where such installation was not done in accordance with Supplier's published installation procedures; and
  - (6) the Customer, or any other unauthorised third party modifying the Goods without the consent of the Supplier or EEI.
- (c) The Customer hereby acknowledges that it has satisfied itself as to the suitability of the Goods for the Customer's particular purpose, use or application and EEI shall not be liable if despite the Goods complying with the specifications they are not suitable for the Customer's particular purpose, use or application.
  - (d) Other than as expressly provided in the Agreement, EEI provides no other warranty to the Customer in relation to the Goods.
  - (e) Pursuant to section 64A of the Australian Consumer Law this clause 17(e) applies in respect of Goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption. This clause 17(e) prevails over any inconsistent provisions in the

Agreement. The liability of EEI for a failure to comply with a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to one of the following (as determined by EEI):

- (1) the replacement of the Goods; or
  - (2) the repair of the Goods.
- (f) EEI's liability under or in connection with the Agreement shall be limited to:
- (1) in respect of injury to or death of any person, TEN MILLION DOLLARS (\$10,000,000) for each event; and
  - (2) in respect of all other damage, loss or liability, the Price of the Goods.
- (g) EEI's liability under or in connection with the Agreement shall be reduced to the extent that any negligence of, or breach of the Agreement by, the Customer contributed to the relevant loss or damage.

## 18. Amendments

EEI shall not be taken to have agreed to any amendment, variation, substitution or supplement of any provision of these terms and conditions or of the Agreement unless the amendment or waiver is in writing signed by EEI. No terms and conditions referred to by the Customer after the date of the Agreement shall form part of the Agreement unless expressly agreed in writing by EEI.

## 19. Force Majeure

- (a) Subject to this clause, a Party is not liable for a failure to comply with any term of the Agreement to the extent that it is unable to comply with that term as a result of Force Majeure.
- (b) If the affected Party is reasonably able to overcome events, circumstances or conditions that constitute Force Majeure without requiring expenditure of material additional costs or resources, then subject to the law, it will take all reasonable steps it is able to take to enable it to comply with the terms of the Agreement.
- (c) If the affected Party is not reasonably able to overcome the events, circumstances or conditions that constitute Force Majeure, then it will notify the other Party of those events, circumstances or conditions.
- (d) An affected Party will provide the other Party with any information which the other Party might reasonably request about the events, circumstances or conditions that

constitute Force Majeure.

- (e) The Delivery Date will be extended by a period equal to the duration of any delay resulting from an event of Force Majeure.
- (f) If the duration of any delay resulting from an event of Force Majeure exceeds 4 calendar months, then either Party may terminate the Agreement by written notice to the other Party, and the Customer will not be liable to pay for any Goods which have not delivered at the date of termination and EEI will have no further liability to deliver Goods not delivered as at the date of termination.

## 20. Confidentiality

### 20.1 Confidential Information

All Confidential Information in whatever form will be treated as and kept confidential by the Parties.

### 20.2 Permitted Disclosure

- (a) Confidential Information may only be disclosed by a Party receiving that information in the following circumstances:
  - (1) to the extent necessary for the performance of any obligations of a Party under the Agreement;
  - (2) to those officers, employees and agents to whom it is necessary to make disclosure;
  - (3) with the consent of the Party who provided the information;
  - (4) where the information was already known to it at the time it received it under the Agreement;
  - (5) where the information is known publicly other than as a consequence of a breach of clause 20.1 by that Party;
  - (6) in connection with the proposed sale of its share capital or any relevant part of its business undertaking;
  - (7) when required by law including, without limitation, to any authority or regulatory body having jurisdiction over the Party (including any stock exchange);
  - (8) to any Related Body Corporate (as defined in section 9 of the Corporations Law).
- (b) The Customer acknowledges and agrees that EEI may disclose, on a confidential basis, any Confidential Information to any member of the SAPN Group.

## 21. Personal Property Securities Act

- (a) The Customer consents to EEI effecting a registration on the register in relation to any security interest arising under or in connection with or contemplated by the Agreement. The Customer waives the right to receive notice of a verification statement in relation to any registration on the register.
- (b) The Customer must:
  - (1) promptly do any act or thing that EEI reasonably requires to ensure that EEI's interest is a perfected security interest and has priority over all other security interests in the Goods; and
  - (2) upon demand, reimburse EEI for all reasonable expenses incurred by EEI in registering a financing statement or financing change statement on the PPSA register or releasing any Goods from EEI's security interest.
- (c) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with the Agreement, the Customer agrees the following provisions of the PPSA will not apply to the enforcement of the Agreement: section 95 (notice of removal of accession), to the extent that it requires EEI to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires EEI to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- (d) EEI agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
- (e) In this clause 21:
  - (1) a reference to Goods means the original Goods supplied and also includes proceeds and commingled property when the context permits; and
  - (2) the following words have the respective meanings given to them in the PPSA: financing statement, financing change

statement, perfected, proceeds, register, registration, security interest and verification statement.

## 22. EEI's Right to Set Off

- (a) A Party must make payment in full of all amounts owing by that Party to the other Party under the Agreement, any other agreement, or at law without any deduction, set off, counter-claim or retention of any money.
- (b) A Party (**Payer**) may withhold, deduct or set off any of the following from or against any amount owing by that Party to the other Party (**Payee**) under the Agreement, any other agreement between the Parties, or at law:
  - (1) any amount owing by the Payer to Payee under the Agreement, any other agreement between the Parties, or at law;
  - (2) any bona fide claim for payment of an amount which the Payer considers will become a debt due and payable by the Payee to the Payer under the Agreement, any other agreement between the Parties, or at law;
  - (3) any amount agreed by the Payee as due to the Payer, or finally awarded in arbitration, litigation or expert determination in favour of the Payer, and which arises out of or in connection with the Agreement, or any other agreement between the Parties, or at law; or
  - (4) the amount of any claim for loss, damages, costs or expenses which has been or may be incurred by the Payer by reason of any breach of or failure to observe the provisions of the Agreement by the Payee, or any other agreement between the Parties, or at law.
- (c) Any amount set-off under the previous sub-clauses is without prejudice to the rights of the Payer in any subsequent negotiations, arbitration, litigation or expert determination to seek to vary the amount set-off.
- (d) The Payer's right to set-off shall be cumulative and in addition to any other rights and remedies which it may have at law or in equity.
- (e) If the Payer sets off an amount and it is subsequently agreed or determined that the claimed amount was not in fact due the Payer must refund that amount to the Payee within 14 days of that agreement or determination, with interest calculated on that amount on a daily

basis from the date it was set-off until the date of payment at the rate which is the average bid rate for bills having a tenor of 90 days which is displayed on the page on the Reuters monitor system page 'BBSY' (or any page that replaces that page).

## 23. Precedence

- (a) The Offer Letter may contain additional or inconsistent terms and conditions to these general terms and conditions (special conditions).
- (b) If there is any inconsistency between:
  - (1) the Offer Letter (including any special conditions);
  - (2) these terms and conditions;
  - (3) any annexures, schedules attached to any of documents (1) or (2) above,
  - (4) the acceptance by EEI of the Purchase Order;
  - (5) the Purchase Order; and
  - (6) any annexures, schedules attached to documents (4) or (5) above,

the documents will take precedence in the order set out above to the extent of any inconsistency or ambiguity.

## 24. Assignment

The Agreement is only assignable by the Customer in whole or in part with EEI's prior written consent.

## 25. Notices

### 25.1 Forms of Notice and Method of Service

- (a) Notices must be in writing and:
  - (1) personally delivered;
  - (2) sent by prepaid post;
  - (3) sent by facsimile; or
  - (4) attached to an email, at the address last notified.
- (b) Notices given under the Agreement in accordance with this clause 25 are deemed served:
  - (1) in the case of delivery in person, when delivered;
  - (2) in the case of delivery by post, four (4) business days after posting (if posted from and to addresses which are in Australia) or

eight (8) business days after posting (if sent to or from an address outside Australia);

- (3) if sent by facsimile or email:
  - (A) at the time the sender's computer or other device generates a report confirming that the facsimile or email has been received by the recipient's computer or other device; or
  - (B) if no such report is generated, one (1) business day after the date on which the facsimile or email is sent, provided that the sender has not by that time received a delivery failure notification (or similar).

### 25.2 Change of Address

Either Party may change the address to which notices can be sent to that Party by giving the other Party not less than five (5) business days' notice of such change in accordance with this clause.

### 25.3 Business Day

For the purposes of this clause 25 "business day", in relation to a notice, means a day other than a Saturday, Sunday or public holiday in the place to which that notice is sent.

### 25.4 Service Outside Business Hours

If, in the absence of this sub-clause, the previous sub-clauses would deem a notice to have been received on a day other than a business day or at a time after 4:00pm on a business day, that notice will be deemed to have been received by the addressee at 10:00am on the next business day after transmission.

## 26. Entire Agreement

- (a) Without limiting any rights under statute which cannot be excluded, the Agreement forms the entire Agreement between the Customer and EEI and shall replace any previous agreement between the parties in relation to sale of the Goods by EEI to the Customer.
- (b) No prior correspondence, discussion or other terms and conditions form part of the Agreement unless stated in the Agreement.

## 27. Miscellaneous Provisions

### 27.1 No Waiver

A Party's failure or delay to exercise a power or right is not a waiver of that right, and the exercise of a power or right does not preclude the future exercise of that or any other power or right.

### 27.2 Law

The Agreement is governed by the laws of South Australia and the Parties submit to the exclusive jurisdiction of the courts of South Australia

### 27.3 Costs

Each Party will pay its own costs in connection with the preparation, negotiation, execution, delivery and performance of the Agreement.

### 27.4 Further Acts

The Parties will do all things and execute all documents necessary to give effect to the Agreement.

### 27.5 Counterparts

The Agreement may be executed in counterparts, which when taken together are one instrument.

### 27.6 Severability

Any provision in the Agreement which is invalid, void or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise to be severed to the extent of that invalidity, voidness or unenforceability, without affecting the remaining provisions of the Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### 27.7 Time of the Essence

Time is of the essence in respect of an obligation to pay money under the Agreement.

### 27.8 Public Announcements

A Party will not make any press or other announcements or releases relating to the Agreement or any transactions the subject of the Agreement without the prior written approval of the other Party to the form, content and manner of the announcement or release.

### 27.9 Terms which may operate unfairly

If the Agreement is a 'consumer contract' or 'small business contract' (each as defined in the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) ("**ACL**")) and a term of that contract would, but for this clause, be 'unfair' (as defined in section 24(1) of the ACL), EEI may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect EEI's legitimate interest.

### 27.10 Survival of Terms

Termination, completion or expiry of the Agreement for any reason shall not extinguish or otherwise affect any rights of either Party against the other:

- (a) which accrued prior to the time of the termination, completion or expiry or otherwise relate to or may arise at any future time from any breach or non-observance of obligations of the Agreement which arose prior to the time of the termination, completion or expiry;
- (b) which by their nature survive termination, completion or expiry of the Agreement including any warranty, indemnity, release, exclusion or limitation of liability provided for in the Agreement;
- (c) which arise under clauses 17, 20, 21, 22, 27.8, 27.9, 27.10, 27.11.

### 27.11 Trusts

In the event that the Customer enters into the Agreement as trustee of a trust (whether or not such trust is disclosed to EEI), it will be liable to EEI in respect of the Agreement both in its own right and as trustee of such trust.

## 28. Definitions

In these terms and conditions and the Agreement, unless the contrary intention appears:

"**Agreement**" means an agreement comprising these terms and conditions, the Offer Letter (if any), the Purchase Order and the acceptance by EEI of the Purchase Order and any annexures, schedules attached to any of such documents;

"**Confidential Information**" means:

- (a) the terms and conditions of the Agreement;
- (b) all correspondence between EEI and the Customer;
- (c) information in any form disclosed by a Party to the other Party;

but does not include:

- (d) information which is or becomes public knowledge in a lawful manner; or
- (e) information that a Party can prove has been developed or derived by the Party without any unauthorised reliance on the other Party's confidential information; or
- (f) information that a Party can prove was received from a third Party in a lawful fashion; or
- (g) information required to be disclosed by law, in which case the Party being placed under the obligation to disclose shall notify the other Party prior to making any disclosure and (but only to the extent permitted by the relevant law) refrain from making any disclosure so that the Party



which disclosed the information has a reasonable opportunity to take such action as may be advised to protect its interests;

“**COR Law**” means the road safety regime contained in State, Territory and Commonwealth legislation that provides that all Parties who commission the carriage of goods or the provision of services by or involving heavy vehicles on roads may be held liable for breaches of road safety and road related laws.

“**Delivery Date**” means the date specified in the Offer Letter or as otherwise agreed in writing by EEI;

“**EEl**” means Enerven Energy Infrastructure Pty Ltd ABN 31 621 124 909;

“**Force Majeure**”, means an event, circumstance or condition not within the reasonable control of a Party. It includes (but is not limited to):

- (a) an act of God, landslide, earthquake or effects of the elements;
- (b) a fire or explosion;
- (c) an outbreak of disease, an epidemic, plague or quarantine;
- (d) a strike, lock-out, ban, boycott or other industrial disturbance or action;
- (e) an act of the enemy, war (whether or not declared), blockade, insurrection, riot, civil disturbance, arrest, restraint of rulers and people;
- (f) an order of any court or an order, act or omission of any government or any governmental authority or a failure to obtain any necessary governmental consent or approval;
- (g) a change in the law;
- (h) a shortage of labour;
- (i) any act or omission of a third party, other than the supplier; and
- (j) an accident at sea;

“**Goods**” means the goods specified in the Offer Letter or an accepted Purchase Order;

“**Governmental Agency**” means any government or governmental, semi-governmental, local government, administrative, fiscal, quasi judicial or judicial body, department, commission, authority, tribunal, agency or entity and includes a person or entity exercising powers under any environmental law;

“**GST**” means any goods and services tax or similar value added tax levied or imposed by the Commonwealth of Australia, and a word or expression

used in the Agreement which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning as given in that Act;

“**Law**” includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law of Australia, whether commonwealth, state, territorial or local, and of any place outside of Australia;

“**Offer Letter**” means the letter (if any) provided by EEI setting out among other things the price and delivery terms;

“**Party**” means the Customer or EEI and “**Parties**” means both of them;

“**Personnel**” means in relation to a Party, any officer, employee, agent, contractor or subcontractor of that Party;

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth);

“**PPSR**” means the personal property securities register established under the PPSA;

“**Price**” means the price payable to EEI for the purchase of the Goods as set out in the Offer Letter (if any) or as otherwise agreed in writing by EEI, but excludes GST and other taxes or imposts payable in connection with the sale of the Goods to the Customer;

“**Purchase Order**” means an order issued by the Customer for the purchase of Goods from EEI on these terms and conditions;

“**Related Body Corporate**” has the meaning given to such expression in the *Corporations Act 2001* (Cth);

“**SAPN Group**” means:

- (a) each member of the partnership known as SA Power Networks ABN 13 332 330 749, being Spark Infrastructure SA (No. 1) Pty Ltd, Spark Infrastructure SA (No. 2) Pty Ltd, Spark Infrastructure SA (No. 3) Pty Ltd, each incorporated in Australia and CKI Utilities Development Limited, PAI Utilities Development Limited, each incorporated in The Bahamas;
- (b) Enerven Energy Infrastructure Pty Ltd ACN 621 124 909;
- (c) Enerven Energy Solutions Pty Ltd ACN 621 147 297;
- (d) each Related Body Corporate of the persons referred to in paragraphs (a), (b) or (c) of this definition; and
- (e) each officer, agent, employee, contractor and sub-contractor of the persons

mentioned in paragraphs (a), (b), (c) or (d) of this definition (other than the Supplier and its Personnel);

“**Site**” means the site at which EEI has agreed to deliver the Goods to (or make them available for collection) as described in the Offer Letter or an accepted Purchase Order; and

“**Supplier**” means the supplier of the Goods to EEI.

## 29. General Interpretation Rules

(a) In these terms and conditions, unless a contrary intention appears:

- (1) reference to these terms and conditions or to the Agreement is a reference to these terms and conditions or the Agreement (as the case may be) as amended, varied, novated, supplemented or replaced from time to time;
- (2) a reference to any legislation, code or other law or any provision thereof includes:
  - (A) all regulations, orders or instruments issued under the legislation or provision; and
  - (B) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- (3) words or expressions:
  - (A) importing the singular include the plural and vice versa;
  - (B) importing a gender include the other gender;
  - (C) denoting individuals or persons include natural persons, corporations, firms, partnerships, unincorporated bodies,

authorities, instrumentalities and other entities;

- (4) a reference to a Party to the Agreement or any other instrument includes that Party's executors, administrators, successors and permitted assigns;
  - (5) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
  - (6) if the Customer comprises two or more persons:
    - (A) reference to the Customer means each of the persons individually and any two or more of them jointly;
    - (B) an obligation on the Customer binds each of them individually and all of them jointly;
    - (C) a representation, warranty or undertaking by the Customer is made by each of them individually and all of them jointly;
  - (7) nothing in the Agreement is to be interpreted against a Party solely on the ground that the Party put forward the Agreement or any part of it;
  - (8) a reference to dollars and \$ is to the currency of Australia;
  - (9) the use of the word "include" or its derivative forms shall not imply any limitation; and
  - (10) a reference to a clause number or schedule is a reference to clause or schedule of these terms and conditions.
- (b) Headings in these terms and conditions do not affect interpretation.