

## 1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract:

**Goods** means the goods, products, materials or equipment supplied by the Supplier and specified in the Contract.

**Completion Date** means the date specified in the Purchase Order or any extension thereof agreed in writing between the parties, on which the Supplier must complete the Services or deliver the Goods.

**Conditions** mean these terms and conditions.

**Contract** means the agreement between the Supplier and Solgen evidenced by the Purchase Order, the Conditions and all other documents which are incorporated by written reference into the Contract by Solgen. The Conditions take precedence over all other documents including any other documents provided by the Supplier.

**Contract Price** means the price or rates specified in the Purchase Order.

**Defects Liability Period** means the period described in clause 8.1 of these Conditions.

**Delivery Place ('Ship To')** means the place the Goods are to be delivered as specified in the Purchase Order.

**Intellectual Property** means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

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

**Purchase Order** means a document entitled "Purchase Order" which is issued by Solgen to the Supplier to order any Works.

**Solgen** means Solgen Energy Pty Ltd (ABN 21 131 625 600) described in the Purchase Order or, if no description has been provided, the entity to which the Supplier is providing the Services or supplying the Goods.

**Services** means all the services the Supplier has agreed to perform for Solgen under its offer and specified in the Purchase Order.

**Site** means the location where the Services are to be performed.

**Supplier** means the party described in the Purchase Order or, if no description has been provided, the entity providing the Goods or Services to Solgen.

**Works** means the scope of works being tendered for as detailed in the Supplier's offer and the Contract, which is inclusive of any Goods and/or Services.

## 2. Offer and Acceptance

1.1 The Supplier is taken to have accepted a Purchase Order if it notifies Solgen that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.

1.2 The Purchase Order once accepted, combined with these Conditions will form a binding contract between the parties.

## 3. Contract Price, Invoicing and Payment

3.1 Unless otherwise stated, the Contract Price is in Australian Dollars and is the agreed Contract Price for the whole of the Works offered, inclusive of testing, packing, documenting and freight to the Delivery Place. The Contract Price is inclusive of

GST and all other taxes and charges whatsoever and howsoever incurred (unless otherwise stated).

3.2 The Contract Price cannot be varied unless agreed by the parties in writing.

3.3 To the extent that rates for variations are specified, they shall be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation shall be estimated by the Supplier at the lowest reasonable cost.

3.4 The Supplier must issue a valid tax invoice (for GST purposes) to Solgen which must be in a form acceptable to Solgen and must include:

(a) the Purchase Order number including the line item numbers on the Purchase Order (if any); and

(b) a detailed description of the delivered Goods or Services completed, including the date of delivery in respect of which the invoice relates;

(c) any other paperwork, photos or other evidence reasonably requested by Solgen in order for it to verify the works have been completed

3.5 The provision of an invoice that complies with clause 3.4 is a precondition to the Supplier's right to payment for the Goods or Services which are the subject of the invoice.

3.6 If any requirement in this clause is not met, Solgen may reject the submitted invoice and the Supplier will need to resubmit the invoice in accordance with this clause.

3.7 Solgen will pay the amount properly invoiced by the Supplier within forty five (45) days from the last day of the month in which the Supplier's tax invoice is received by Solgen.

3.8 Solgen is not obliged to pay for any Goods or Services which was performed outside the scope of works or done without the prior approval of Solgen.

3.9 Solgen may deduct from such amount due and payable by Solgen pursuant to this Contract, any amounts payable by the Supplier to Solgen on any account whatsoever.

3.10 A payment made pursuant to the Contract will not be evidence of the value of Works provided or an admission of liability or that the Goods delivered or Services completed, or any part of the Goods delivered or Services completed, were to the satisfaction of Solgen but will be a payment on account only. Payment made by Solgen does not release the Supplier from liability to rectify any defects which are the result of the Goods delivered or Services completed or to carry out any further works reasonably requested by Solgen in connection with the relevant payment.

## 4. Packaging

The Supplier, at its cost, shall properly and carefully pack and protect the Goods in accordance with industry best practice having regard to methods of carriage, handling and to climatic conditions on the way to the Delivery Place. The Supplier will provide all lifting and handling of Goods in transit.

## 5. Delivery

Time is of the essence as to the Supplier's performance under this Contract. The delivery of the Goods to the Delivery Place and/or the completion of the Services must be achieved by the Completion Date unless an extension of time has been agreed to in writing by Solgen.

## 6. Subcontracting

- 1.1 The Supplier may not subcontract any obligations under this Contract without the prior written consent of Solgen.
- 1.2 Where the Supplier subcontracts any of its obligations under the Contract, the Supplier remains liable for the carrying out and completion of those obligations.

## 7. Warranties

The Supplier warrants that:

- 7.1 it will exercise the skill, care and diligence to the standard acceptable to the trade, industry or profession of a similar nature;
- 7.2 it will perform the Works in a timely and professional manner using appropriately trained and experienced personnel;
- 7.3 the Works will be fit for the purposes intended and comply with any agreed design, specifications, drawings, samples or any other requirements of this Contract;
- 7.4 it will comply with all relevant Australian Standards and legislation, including the relevant Building Codes; and
- 7.5 further, in respect of any Goods supplied:
  - (a) the Goods are free from defects in material and workmanship;
  - (b) the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;
  - (c) the Goods will be new and of merchantable quality and be free of defects;
  - (d) the Supplier has ensured that Solgen and its client (if requested by Solgen) has been assigned all the usual and customary trade warranties and/or has the benefit of such warranties upon completion of the Works and that copies of such warranties will be supplied to Solgen with invoices for payment; and

## 8. Defects Liability Period and Rectification of Defective Works

- 8.1 The Supplier warrants all Works and workmanship against any defect for the period stated in the Purchase Order and where no period is stated, for a period of twelve (12) months from the receipt of the Goods or the completion of the Services.
- 8.2 At any time up to the expiry of the Defects Liability Period, if any part of the Works are found by Solgen to be defective and/or not in compliance with the Contract, the Supplier must immediately repair or replace the Works which are damaged, defective or found not to be in accordance with the Contract during the Defects Liability Period, to the satisfaction of Solgen at the Supplier's costs.
- 8.3 The Supplier shall be responsible for all incurred costs associated with the repair or replacement of the Works, including transportation costs.

## 9. Indemnity

- 9.1 The Supplier will indemnify Solgen and keep Solgen indemnified against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses in respect of:
  - (a) injury to (including illness or disability), or death, of any person; and

- (b) loss or destruction of or damage to or loss of use of any property, caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents or contractors or by any breach of this Contract by the Supplier (including any breach of a warranty), but this indemnity will be reduced proportionately to the extent that any liability is caused or contributed to by the wilful default or unlawful or negligent act or omission of Solgen.

## 10. Insurances

- 10.1 The Supplier shall effect and maintain the following insurances throughout the term of this Contract
  - (a) Public and Product Liability insurance for an amount not less than \$20 million;
  - (b) Contract Works Insurance for an amount not less than the value of the Works;
  - (c) Professional Indemnity insurance for an amount not less than \$5 million, if applicable.
  - (d) Workers Compensation Insurance; and
  - (e) such other insurance as stated in the Purchase Order.
- 10.2 Before the Supplier commences any Works and whenever requested in writing by Solgen, the Supplier shall provide evidence of insurances required to be held under clause 10.1.
- 10.3 Provision of evidence of insurance is a precondition to the Supplier being paid by Solgen pursuant to clause 3.

## 11. Termination

- 11.1 If the Supplier:
  - (a) fails to provide the Works in accordance with this Contract and Purchase Order;
  - (b) breaches this Contract and fails to remedy any breach to the reasonable satisfaction of Solgen within 14 days of written notice from Solgen;
  - (c) becomes insolvent or bankrupt;then Solgen may by written notice to the Supplier terminate this Contract, and the termination will take effect from the date specified in the notice.
- 11.2 In the event of termination due to default by the Supplier, Solgen can appoint another supplier to complete the uncompleted portion of the Works at the Supplier's cost.
- 11.3 Termination of the Contract pursuant to this clause shall be without prejudice to the rights of Solgen.

## 12. Reporting and Inspection

- 12.1 The Supplier must report progress of the Works to Solgen on a regular basis.
- 12.2 Solgen's nominated representative may inspect the Works from time to time during the progress of the Works, and on the Completion Date and will examine the documentation to ensure compliance to the Contract. Any technical or commercial questions or notices should be addressed to him/her and his/her written instructions in response to those questions or notices will become part of this Contract and should be accepted as lawful instructions for the execution of the Contract.

## **13. Access**

---

Solgen's nominated representative shall be afforded free access to any place where the Works are being carried out during the progress of the Contract for the purpose of expediting or inspection of the Works.

## **14. Title and Risk**

---

14.1 Title in the Goods supplied will pass to Solgen from the Supplier on delivery.

14.2 Risk in the Works passes to Solgen on the Completion Date.

## **15. Personal Properties Security Act**

---

15.1 In this clause 16 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.

15.2 The Supplier acknowledges that Solgen has a purchase money security interest in the Goods including, but not limited to, where Solgen has paid the Supplier (in whole or in part) for the Goods prior to delivery.

15.3 The Supplier acknowledges that if Solgen has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.

15.4 Solgen may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as Solgen determines in its absolute discretion). The Supplier must provide Solgen with any information it requires for the purposes of giving effect to such registration.

15.5 For the purposes of section 157(3) of the PPSA, the Supplier irrevocably and unconditionally waives its right to receive any notice from Solgen in connection with the registration of a financing statement or a financing change statement in respect of the Goods.

15.6 If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.

15.7 The Supplier must take any steps (including provide information) Solgen reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.

15.8 Neither the Supplier nor Solgen will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.

15.9 Until Solgen's security interest (whether perfected or not) is satisfied, the Supplier agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Supplier breaches this subclause, the Supplier shall indemnify Solgen for any cost, expense, loss or damage suffered.

## **16. Ownership, Confidentiality & IP**

---

16.1 Confidential information. The Supplier and Solgen must each protect and preserve the confidential nature of all information that was made available to each other in confidence, including customer details, confidential installation manuals, plans, drawings, designs, specifications, price lists, rates, know-how, inventions and any confidential correspondence (Confidential Information).

The Supplier cannot use or allow for publication or broadcasting any information concerning the Services under the Agreement in any media without the prior written approval of Solgen.

The Supplier will implement proper systems and procedures as may be reasonably necessary and as are reasonably required by Solgen to maintain the confidentiality of Confidential Information.

The Supplier must immediately notify Solgen if it becomes aware of any actual or suspected breach of this clause and use its reasonable endeavours to remedy or prevent such a breach.

16.2 Ownership of IP. The Supplier acknowledges that it does not obtain any ownership, right or title in relation to any materials supplied by Solgen and that Solgen owns all intellectual property rights including in any designs or instruction manuals and Solgen's other Confidential Information, any documentation or information Solgen gives the Supplier and Solgen's brands (Solgen's IP). Solgen grants the Supplier an irrevocable royalty free licence to use Solgen's IP in connection with the Works.

16.3 Obligations survive termination. The rights and obligations in this clause survive termination of this agreement.

## **17. General**

---

17.1 Solgen's liability to the Supplier is limited to its liability to pay the Contract Price, as amended from time to time, in accordance with this Contract.

17.2 Notwithstanding any other provision of the Contract and to the full extent permitted at law, Solgen is not liable for any indirect, special, contingent or consequential type losses or damages, including but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

17.3 If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.

17.4 Any waiver by Solgen of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of Solgen.

## **18. Place of Contract and Governing Jurisdiction**

---

The Contract is governed by the laws of the jurisdiction stipulated in the Purchase Order and the parties submit to the non-exclusive jurisdiction of those Courts. If no place is nominated in the Purchase Order, the jurisdiction and place of contract is the place in which the Goods are delivered or the Services are performed.