

CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES UNDER A LOCHARD ENERGY PURCHASE ORDER

1. Definitions

In these Conditions:

"Conditions" means these conditions for the supply of goods and/or services;

"Defects Liability Period" means the period of 24 months from the date of delivery;

"Delivery Location" means the delivery location specified in the Order Form;

"Delivery Date" means the date for delivery specified in the Order Form;

"Lochard Energy" means the entity which issues the Order Form as indicated in the Order Form;

"Lochard Energy Contact" means the person identified as such in the Order Form;

"Goods" means the goods described in the Order Form;

"GST" means goods and services tax within the meaning of the GST Act;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Order" means the Order Form and these Conditions;

"Order Form" means the order form in which the relevant Goods and/or Services are specified;

"Price" means the price specified in the Order Form;

"Services" means the services described in the Order Form;

"Tax Invoice" has the meaning defined in the GST Act; and

"Vendor" means the supplier of the Goods and/or the Services named in the Order Form.

2. Preliminary

2.1 The Vendor will be taken to have accepted an Order by:

- (a) delivering the Goods and/or Services (or any part thereof) described in the Order Form to Lochard Energy; or
- (b) otherwise representing to Lochard Energy the Vendor's intention to deliver the Goods and/or Services.

2.2 Subject to clause 2.3, acceptance of an Order by the Vendor in the manner described in clause 2.1, without anything further, constitutes acceptance of these Conditions to the exclusion of any other terms. Therefore, unless otherwise agreed by Lochard Energy in writing:

- (a) if the Vendor accepts an Order, the Vendor's standard terms and conditions (if any) do not apply; and
- (b) any prior representations, negotiations, arrangements, understandings or communications between the parties about an Order and/or the subject matter of an Order are superseded and replaced by these Conditions.

2.3 These Conditions will not supersede or replace any existing supply agreement in writing between the Vendor and Lochard Energy and, unless otherwise notified by the Lochard Energy Contact, any such existing supply agreement will continue in full force to the exclusion of these Conditions.

2.4 No changes to an Order may be made without Lochard Energy's written consent.

2.5 Lochard Energy may, at any time prior to delivery, cancel an Order in whole or in part by written notice to the Vendor and no penalty or liability for damages will be incurred by Lochard Energy in connection with such cancellation.

3. Delivery of Goods

3.1 The Vendor must:

- (a) deliver the Goods to the Delivery Location by the Date, or within a reasonable time if the Delivery Date is not specified;
 - (b) ensure that Goods delivered match the Goods ordered;
 - (c) package the Goods so as to:
 - (i) prevent damage to the Goods; and
 - (ii) minimise waste;
 - (d) use reasonable endeavours to package the Goods using packaging that is recyclable;
 - (e) where the Goods are delivered on pallets, use reasonable endeavours to use pallets that are either recyclable or reusable and collect the reusable pallets from the Delivery Location when they are no longer required by Lochard Energy;
 - (f) ensure that the Goods are prepared appropriately for shipment and to at least the carrier's requirements; and
 - (g) notify Lochard Energy as soon as practicable if the delivery of the Goods is likely to be delayed.
- 3.2 The Vendor is responsible for all transport costs, including freight and insurance charges, incurred in delivering the Goods to the Delivery Location.
- 3.3 Lochard Energy may, at any time before delivery of the Goods, inspect or test the Goods at the Vendor's premises or elsewhere.
- 3.4 Risk in the Goods remains with the Vendor until acceptance by Lochard Energy of the Goods at the Delivery Location. Lochard Energy will be deemed to have accepted the Goods if it does not inform the Vendor within 30 days of delivery that the Goods are unacceptable for any reason whatsoever.
- 3.5 Lochard Energy may reject the Goods by informing the Vendor within 30 days of delivery that the Goods are not acceptable.
- 3.6 Lochard Energy:
 - (a) is not required to pay for Goods that it rejects under clause 3.5; and
 - (b) is only required to return rejected Goods to the Vendor if so requested.
 All expense and risk in rejected Goods remains at all times with the Vendor.
- 3.7 Lochard Energy may, at any time, return to the Vendor, at the Vendor's cost, Goods found to contain latent defects, and the Vendor must repay Lochard Energy the Price paid for such defective Goods.
- 3.8 The Vendor must not subcontract or delegate the manufacture of the Goods to any other party without the prior written consent of Lochard Energy. In any event, any subcontracting or delegation by the Vendor will not relieve the Vendor of any of its obligations arising under or in connection with these Conditions.
- 3.9 If:
 - (a) Lochard Energy notifies the Vendor of a defect in the Goods during the Defects Liability Period, the Vendor must, at its own cost, repair, replace or otherwise make good that defect within a time agreed with Lochard Energy or, failing agreement, within a time specified by Lochard Energy acting reasonably; and
 - (b) the Vendor fails to repair, replace or otherwise make good a defect within the time agreed or specified by Lochard Energy under clause 3.9(a), Lochard Energy may do so or engage another party to do so at the Vendor's risk and expense.
- 3.10 The Defects Liability Period will recommence (and restart from the beginning) from the date of the

- repair, replacement or making good, but only in respect of that part of the Goods repaired, replaced or made good.
4. **Provision of Services**
- 4.1 The Vendor must provide the Services:
- in a prompt, safe, conscientious and professional manner exercising due care, skill and diligence and at all times acting in a proper and honest manner;
 - according to all directions given by the Lochard Energy Contact;
 - in compliance with all applicable laws, safety regulations and ordinances; and
 - in compliance with Lochard Energy's work practices and site arrangements (including, without limitation, site safety arrangements) as notified by Lochard Energy from time to time.
- 4.2 Where the Services are to be performed on Lochard Energy's premises or in the vicinity of power lines, electrical plant and equipment or live electrical apparatus, the Vendor must not commence work until the Lochard Energy Contact has issued the relevant authority form, unless the Vendor is appropriately authorised under applicable laws or regulations to do so.
- 4.3 At any time, if Lochard Energy is dissatisfied with the Vendor's provision of the Services, it may request the Vendor to provide the Services (or any part of the Services) again and the Vendor must perform the work at no extra charge to Lochard Energy.
- 4.4 The Vendor must not subcontract or delegate the provision of the Services to any other party without the prior written consent of Lochard Energy. In any event, any subcontracting or delegation by the Vendor will not relieve the Vendor of any of its obligations arising under or in connection with these Conditions.
- 4.5 The Vendor must complete delivery of the Services by the Delivery Date or, if no Delivery Date is specified, within a reasonable time.
5. **Warranties**
- 5.1 The Vendor warrants to Lochard Energy that the Goods:
- are fit for the purpose for which the Goods, or goods of the same kind, are usually acquired and any other purpose of Lochard Energy made known to the Vendor;
 - will function and perform in all respects as represented by the Vendor;
 - comply with every aspect of the Goods' description in an Order or, if there is no description, the highest industry quality standards for their manufacture;
 - are comprised of new and unused components;
 - are of merchantable quality;
 - are free from all faults and defects;
 - will fully integrate with and operate within Lochard Energy's existing operational environment;
 - do not, and Lochard Energy's use of the Goods will not, infringe any intellectual property rights of any person; and
 - comply with all relevant laws (which compliance Lochard Energy may require the Vendor to demonstrate on request).
- 5.2 The Vendor warrants to Lochard Energy that, immediately prior to the time of delivery, it will own the Goods free of any third party or other security interests.
- 5.3 The Vendor warrants to Lochard Energy that the performance of the Services will:
- comply with every aspect of the Services' description in an Order or, if there is no description, the highest industry quality standards for their performance;
 - be performed with all due skill and care;
 - provide the functionality and performance represented by the Vendor;
 - be provided to Lochard Energy free of any restrictive covenants imposed by any other party; and
 - comply with all relevant laws (which compliance Lochard Energy may require the Vendor to demonstrate on request).
- 5.4 If, in the supply of the Goods or Services, the Goods are, or any property of Lochard Energy or its employees, agents or contractors is, damaged, Lochard Energy may, at its election (and without limitation to its other rights):
- require the Vendor to repair or resupply the Goods at the Vendor's cost;
 - require the Vendor to resupply the Services; or
 - deduct from the Price the cost of having the Goods repaired or resupplied or the Services resupplied.
6. **Payment terms and GST**
- 6.1 The amount payable for the Goods and/or Services by Lochard Energy will be, subject to clause 6.2, the Price exclusive of GST. The Price includes all applicable taxes, duties, levies and charges.
- 6.2 Lochard Energy must pay to the Vendor any amount which is payable by the Vendor on account of GST as a consequence of any supply made to Lochard Energy under this Order.
- 6.3 Following receipt of a valid Tax Invoice under clause 6.4, but subject to clause 6.5, Lochard Energy will pay the Vendor within:
- 30 days from the end of the month in which the Tax Invoice is received. This requirement applies if the payment terms in the Order Form specify "End of Next Month"; or
 - such other period from the date on which the Tax Invoice is received as is specified on the Order Form. If zero is specified as the payment terms on the Order Form, this means that payment must be made as soon as reasonably practicable.
- 6.4 The Vendor must give to Lochard Energy within 28 days of delivery or performance a Tax Invoice which:
- is fully compliant with the GST Act; and
 - states the Order number, full details of the Goods delivered or Services performed, the Price and any other information that Lochard Energy may require.
- 6.5 Payment is subject to:
- the Lochard Energy Contact (acting reasonably) certifying that the Goods supplied or the Services performed are satisfactory, including, in the case of Goods, that the Goods were delivered to the appropriate Delivery Location with all packaging clearly marked with the relevant Order number and marked to the attention of the appropriate Lochard Energy person; and
 - the invoice from the Vendor containing at least the following information:
 - the relevant Order number (only one per invoice);

- (ii) Vendor number as allocated by Lochard Energy;
 - (iii) total invoice amount;
 - (iv) line number and item description as per the Order Form (if applicable);
 - (v) quantity delivered and unit price (if applicable);
 - (vi) extended amount per item (if applicable);
 - (vii) delivery address, date of delivery and dispatch docket number (if applicable).
- 6.6 The Vendor may not vary the price of any Goods or Services without the prior written consent of Lochard Energy.
- 7. Indemnities**
- 7.1 The Vendor indemnifies Lochard Energy against all claims, damages, suits, actions, liabilities, losses, demands, actions, costs and expenses incurred by any person arising directly or indirectly from:
- (a) a breach of these Conditions;
 - (b) the supply of Goods and/or Services to Lochard Energy;
 - (c) any negligent act, omission or unlawful action by the Vendor or any of its employees, officers, agents or subcontractors;
 - (d) any injury or death of any person or damage or destruction of any property arising as a consequence of the Vendor's acts or omissions, negligence or otherwise;
 - (e) Lochard Energy being deemed a "manufacturer" under Chapter 3, Part 3.5 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth); or
 - (f) any infringement of a third party's intellectual property rights in the Goods and/or Services.
- 7.2 The indemnity in clause 7.1 is a continuing indemnity and is not satisfied or discharged by any payment made pursuant to the indemnity.
- 7.3 The Vendor is deemed to be aware of the inherent dangers and risks in Lochard Energy's activities, and accordingly the Vendor:
- (a) releases Lochard Energy from all liability arising from or in connection with any injury or death of the Vendor's employees, agents or contractors on Lochard Energy's premises; and
 - (b) must insure itself fully in respect of all potential public liability claims.
- 8. Confidentiality**
- 8.1 If in the performance of the Order pursuant to these Conditions or otherwise, the Vendor obtains or becomes aware of any sensitive or confidential information relating to Lochard Energy or its business, partners or customers ("Confidential Information"), the Vendor must not, without Lochard Energy's prior written consent, disclose to any person the Confidential Information, except to those of its employees that are involved in the completion of an Order and then on a strictly confidential basis. The Vendor must immediately notify Lochard Energy if it knows of, or suspects, any unauthorised disclosure of the Confidential Information. This obligation survives the satisfaction or termination of an Order.
- 8.2 The Vendor must not reproduce an Order or advertise or publish any details of an Order without Lochard Energy's prior written consent.
- 9. Intellectual property**
- The Vendor assigns to Lochard Energy ownership of all copyright and other intellectual property rights in and to all documents, drawings, maps, characters, images, photographs, artwork, blueprints, calculations, information and instructions prepared in connection with an Order.
- 10. No relationship**
- The Vendor is not an employee, agent or representative of Lochard Energy and has no authority to act on behalf of Lochard Energy.
- 11. Termination**
- 11.1 Without limiting Lochard Energy's entitlement under clause 2.5, Lochard Energy may terminate an Order (to the extent that the Order has not been fully satisfied), immediately on written notice to the Vendor if the Lochard Energy Contact believes the Vendor has breached these Conditions.
- 11.2 Following such termination, the Lochard Energy Contact will value any Goods and/or Services received to reevaluate the Price payable for such Goods and/or Services.
- 11.3 Notwithstanding the termination of any Order under this clause 11, the Vendor remains liable under these Conditions to Lochard Energy in respect of any Goods or Services provided up to the time of termination.
- 12. Disputes**
- 12.1 Any dispute between the parties concerning an Order will be dealt with as follows:
- (a) Lochard Energy must refer the dispute to its Lochard Energy Contact and the Vendor must appoint an equivalent officer, who together must attempt to resolve the dispute;
 - (b) if the dispute is not resolved within 3 weeks after such referral, the parties must refer the dispute to nominated senior representatives for resolution; and
 - (c) if the dispute is not resolved under clause 12(b) within 2 weeks, only then may the parties commence legal proceedings.
- 12.2 Nothing in this clause 12 prevents a party from seeking urgent injunctive relief or similar interim relief from a court.
- 13. Limitation of trustees' liabilities and obligations**
- 13.1 This clause 13 applies to any party who is a trustee (Trustee) of a trust or fund (Trust).
- 13.2 Each Trustee and the Vendor acknowledge that each Trustee enters into this arrangement for an Order in its capacity as trustee of its Trust and in no other capacity.
- 13.3 Any liability arising under or in connection with this Order pursuant to these Conditions is limited to, and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of its Trust against which such Trustee is actually entitled to be indemnified in respect of any liability incurred by it as Trustee of such Trust. This limitation of the Trustee's liability applies despite any other provision of these Conditions and extends to all liabilities and obligations of such Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to these Conditions.
- 13.4 The Trustee is not obliged to do or refrain from doing anything under these Conditions (including to incur any liability) unless its liability is limited in the same manner as set out in this clause 13.
- 13.5 The Vendor may not sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator, or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- 13.6 The provisions of this clause 13 do not apply to any obligation or liability of the Trustee to the extent that it is not satisfied under the agreement governing the Trust or by operation of Law there is a reduction in the

extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, gross negligence or breach of trust.

- 13.7 No attorney, agent, receiver or receiver and manager appointed in accordance with these Conditions has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability.
- 13.8 For the purposes of this clause 13, a reference to Law means the law in force in the State of Victoria and the Commonwealth of Australia, including common law, legislation and subordinate legislation, and ordinances, regulations, orders and by-laws or relevant government, semi-government or local authorities.
14. **Severance**
If a provision of these Conditions is invalid or unenforceable, it is to be read down or severed to the extent of the invalidity or unenforceability and that fact will not affect the remaining provisions.
15. **Governing law**
An Order is to be interpreted according to the laws of Victoria and each party submits to the jurisdiction of the courts of that State.
16. **Assignment**
The Vendor may not assign or novate its rights and obligations under an Order without Lochard Energy's prior written consent.
17. **Construction**
No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, an Order or any part of it.