

Lochard Energy (Iona Operations) Pty Ltd (ACN 608 441 729) as trustee for  
Lochard Energy (Iona Operations) Trust ABN: 25151811449

## 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.

**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).

**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.

**Modern Slavery** has the meaning given to that term in the *Modern Slavery Act 2018* (Cth), as amended from time to time.

**Modern Slavery Law** means the *Modern Slavery Act 2018* (Cth) and any other applicable modern slavery laws, regulations and codes.

**Order** means the Order Form and these Conditions.

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

**Personnel** means the employees, officers, agents, representatives, contractors and/or subcontractors of a party.

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

**Services** means the services described in the Order Form.

**Supplier Code of Conduct** means Lochard Energy's code of conduct for suppliers of goods or services to Lochard Energy, as notified and made available to you from time to time.

**Tax Invoice** has the meaning defined in the GST Act.

**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:

- (a) no terms or conditions submitted by the Vendor that are in addition to different from or inconsistent with those contained in these Conditions, including without limitation, the Vendor's printed terms and conditions, and any terms and conditions

contained in a Vendor's quotation, invoice, order, acknowledgement, confirmation, acceptance or other document shall apply as between Vendor and Lochard Energy unless expressly agreed to in writing by a duly authorized representative of Lochard Energy; 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 in writing 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 prior 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 Lochard Energy will pay the Vendor any reasonable direct costs incurred by the Vendor in the preparation of the Order up to the date of cancellation.

## 3 Delivery of Goods

3.1 The Vendor must:

- (a) deliver the Goods to the Delivery Location by the Delivery Date, or within a reasonable time if the Delivery Date is not specified and in accordance with any reasonable requirements notified to Vendor by Lochard Energy;
- (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 delivery to 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 14 days of delivery, in accordance with clause 3.5 below, that the Goods are unacceptable for any reason whatsoever.

3.5 Lochard Energy may reject the Goods by notice in writing informing the Vendor within 14 days of delivery if Lochard Energy determines (acting reasonably) 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:

- (a) 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;
- (b) according to all reasonable directions given by the Lochard Energy Contact;
- (c) in compliance with all applicable laws, safety regulations and ordinances; and
- (d) 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 the Vendor must not commence work until the Lochard Energy Contact has issued the relevant authority form.

4.3 At any time, if Lochard Energy is dissatisfied (acting reasonably) 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:

- (a) 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;
- (b) will function and perform in all respects as represented by the Vendor;
- (c) 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;
- (d) are comprised of new and unused components;
- (e) are of merchantable quality;
- (f) are free from all faults and defects;
- (g) will fully integrate with and operate within Lochard Energy's existing operational environment;
- (h) do not, and Lochard Energy's use of the Goods will not, infringe any intellectual property rights of any person; and
- (i) 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:

- (a) 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;
- (b) be performed with all due skill and care and all Personnel employed by Vendor to carry out the Services possess the necessary skills and required licences expected of a professional Vendor experienced in providing similar Services;
- (c) provide the functionality and performance represented by the Vendor;
- (d) be provided to Lochard Energy free of any restrictive covenants imposed by any other party; and
- (e) 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 Personnel is damaged, Lochard Energy may, at its election (and without limitation to its other rights):

- (a) require the Vendor to repair or resupply any Goods that have been damaged at the Vendor's cost; or
- (b) deduct from the Price the cost of having the Goods or other property of Lochard Energy repaired or 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 Subject to receipt of a valid Tax Invoice in accordance with clause 6.4, 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:

- (a) if the payment terms in the Order Form specify "End of Next Month" or if no payment terms are specified in the Order Form, within 30 days from the date on which the Tax Invoice is received; or
- (b) such other period from the date on which the Tax Invoice is received as is specified on the Order Form.

6.4 The Vendor must give to Lochard Energy within 28 days of delivery or performance a Tax Invoice which:

- (a) is fully compliant with the GST Act;
- (b) states the Order number, full details of the Goods delivered or Services performed, the Price and any other information that Lochard Energy may require; and
- (c) is sent to the email address specified in the Order Form

6.5 Payment is subject to:

- (a) 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
- (b) the invoice from the Vendor complying with clause 6.4.

6.6 The Vendor may not vary the price of any Goods or Services without the prior written consent of Lochard Energy.

## 7 Indemnities and Insurance

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 by Vendor or its Personnel of these Conditions;
- (b) any negligent act, omission or unlawful action by the Vendor or any of its Personnel;
- (c) 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;
- (d) Lochard Energy being deemed a "manufacturer" under Chapter 3, Part 3.5 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth); or
- (e) any infringement of a third party's intellectual property rights in the Goods and/or Services,

except to the extent Lochard Energy has caused or contributed to the claim, damage, suit, action, liability, loss, demand, action, costs or expenses'.

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 must effect and maintain the following insurance policies during the performance of the Vendor's obligations under these Conditions and provide such evidence as Lochard Energy reasonably requires confirming the coverage:

- (a) Public and Products Liability Insurance appropriate for the nature of the business conducted by the Vendor;

(b) insurance in respect of all claims and liabilities arising at law relating to workers compensation or employer's liability from death of, or bodily injury (including disease or illness) to any Vendor; and Personnel in connection with these Conditions; and

(c) where Services are to be performed pursuant to these Conditions, Professional Indemnity Insurance with a limit of liability appropriate to the business of the Vendor.

## 8 Confidentiality

8.1 If in the performance of the Order, 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 Lochard Energy believes (acting reasonably) that the Vendor has breached these Conditions and, where such a breach is capable of remedy, the Vendor has not rectified the breach after Lochard Energy has provided the Vendor written notice of the breach and a reasonable period of time to rectify the breach following that notice.

11.2 Following such termination, the Lochard Energy Contact will, acting reasonably, value any Goods and/or Services received to re-evaluate the Price payable for such Goods and/or Services and inform the Vendor of how that valuation has been determined.

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 12.1(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 Modern Slavery

17.1 The Vendor in performing its obligations under these Conditions must, and must ensure that each of its Personnel that are engaged in connection with an Order will:

(a) comply with:

- (i) all Modern Slavery Laws;
- (ii) any reasonable direction given by Lochard Energy to ensure compliance with any Modern Slavery Law;
- (iii) any relevant Lochard Energy policies, procedures, statements or codes of conduct relating to Modern Slavery which have been notified to the Vendor by Lochard Energy from time to time, including but not limited to the Supplier Code of Conduct; and

(b) implement an appropriate system to ensure compliance with Modern Slavery Laws and this clause 17.1, which may include establishing, maintaining and implementing policies and procedures and undertaking due diligence, audit and training.

17.2 The Vendor represents and warrants, as at the date of this Order and throughout the term, that:

(a) The Vendor is not aware of any Modern Slavery in its, or any of its subcontractors' or suppliers', operations or supply chains; and

(b) neither it nor any of its Personnel, nor as far as it is aware having undertaken all reasonable due diligence, its suppliers (or its supplier's personnel):

- (i) have been convicted of any offence involving Modern Slavery; or
- (ii) are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any alleged Modern Slavery offence.

17.3 The Vendor must:

(a) immediately notify Lochard Energy if it becomes aware of any:

- (i) breach, or any conduct which may give rise to a breach, of clause 17.1;
- (ii) information which means the representations and warranties in clause 17.2 may no longer be true and correct; and

(b) keep appropriate records evidencing the measures taken to ensure compliance under clause 17.1 and provide these records to Lochard Energy on request.

### 18 Availability of information

All accounts and records must be properly and accurately maintained by the Vendor and provided to Lochard Energy on request for the purposes of ensuring that these Conditions have been complied with.

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**19 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.