

## TERMS AND CONDITIONS OF PURCHASE

### 1. INTERPRETATION

1.1 For the purpose of these Terms and Conditions and unless the context otherwise requires:

**"Confidential Information"** means any ideas, methods, mathematical formulas, trade secrets, know-how and other intellectual property furnished to Seller by Dalkia, its agents or contractors, but does not include information which is:

- (i) publicly known at the time of disclosure;
- (ii) known to Seller at the time of disclosure through no wrongful act of Seller;
- (iii) received by seller from a third party without restrictions similar to those in the Contract, or
- (iv) independently developed by Seller.

**"Contract"** means the contract formed in accordance with Clause 2.1 and consisting of the Order together with all documents attached or incorporated by reference with the written approval of Dalkia and where applicable, Special Conditions of Subcontract;

**"Goods or Services"** means any goods or services supplied or provided by the Seller;

**"Dalkia "** means either Dalkia Energy Solutions Pty Limited (ABN 064 584 587);

**"Delivery Date"** means the date stipulated in the Order for the delivery of the Goods or Services.

**"Intellectual Property"** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended from time to time).

**"Order"** means this document and any related specifications or other particulars forming part of this Order;

**"Seller"** means the person so described in the Order and includes sub-contractors and all other classes of persons performing any type of work under the Order.

**"Specifications"** means (in order of priority) (a) any description or representation about the Goods or Services provided by Dalkia or referred to in the Order and (b) the Supplier's published specification for the Goods

**"Warranty Period"** means the period identified in the Order commencing on the date of the final supply and acceptance of the Goods. If none stated, then 12 months from acceptance of the Goods by Dalkia.

### 2. ACCEPTANCE OF ORDER

2.1 Upon acceptance by the Seller of an Order the Contract shall take effect and shall form the entire agreement between the parties with respect to the Goods and/or Services referred to in the Order, to the exclusion of any conditions of sale appearing on any document of Seller. Any document of Seller which purports to modify the Contract does not apply unless expressly accepted in writing by Dalkia.

2.2 An Order shall be deemed to have been accepted by the Seller upon written acceptance or in the absence of written acceptance upon part performance of the Order by the Seller.

2.3 Despite clause 2.2, Dalkia may cancel an Order within a reasonable time prior to scheduled delivery without further liability to the Seller.

### 3. PRICES AND TERMS OF PAYMENT

3.1 No extra charges of any kind including but not limited to packing, boxing, crating, delivery freight or insurance will be paid for by Dalkia unless so provided in the Order.

3.2 Prices shown on an Order are not subject to escalation or variation for any reason whatsoever unless agreed to in writing by Dalkia's relevant branch manager (or equivalent). Period price increases agreed to by Dalkia must be notified to Dalkia at least 30 days prior to the effective date of the increase.

3.3 Seller represents and warrants that the prices quoted in an Order (including cash or credit discounts or rebate) shall not be:

- (a) in excess of Seller's list, catalogue or published prices; or

(b) materially higher than prices quoted or currently being charged by Seller to any other purchaser for similar goods or services in similar circumstances.

3.4 Invoices for Goods are to be mailed to the address set out in the Order the day following dispatch or collection of the Goods, unless otherwise agreed in writing. Subject to clause 5.1 (and unless contrary to law or prior written agreement), accounts will be settled by cheque on the next normal payment run following 45 days from receipt of the Seller's invoice. Dalkia shall not be responsible for delay in receipt of the Seller's invoice.

3.5 In the case of Services, progress claims are to be submitted monthly or as otherwise provided in the Contract and may be subject to statutory withholdings and/or appropriate retention until expiration of the warranty period relating to the supply.

3.6 Dalkia need not pay for Services performed or Goods supplied by the Seller beyond the requirements of the Contract. Excess Goods will be returned at the Seller's expense.

3.7 Dalkia will not be responsible for any delay in payment due to Seller failing to quote the relevant Order on all invoices, packing notes and other correspondence or in the event of any disagreement between an invoice.

3.8 Except as otherwise specified in an Order, the price includes all federal, state, local or foreign taxes (including any goods and service tax), stamp duties and other governmental charges upon the manufacture, sale or transportation of the goods or on the provision of services. Any invoice for goods must include a tax invoice complying with the legislation under which goods and services tax is imposed. The provision of a tax invoice is a precondition to payment of any invoice.

3.9 Dalkia is entitled to set off any amount owing at any time by Seller or any of its affiliates. Without limitation, credits due to rejection or discrepancies will be set off from the amount on the invoice or will be deducted from subsequent payments.

### 4. DELIVERY AND DELAY

4.1 The Seller shall, subject to clause 3.1, at its own expense, crate, package or otherwise prepare goods for shipment in accordance with Dalkia's instructions and otherwise in a fashion which will ensure safe and secure delivery to Dalkia.

4.2 The Seller must supply the Goods to the Place of Delivery noted on the Order by the Delivery Date. The time for delivery specified in the Contract shall be of the essence.

4.3 If the Seller is aware that delivery of the Goods and/or Services may be delayed, it must promptly notify Dalkia in writing. The Seller must take all steps necessary to minimise any delay or potential delay. The Seller accepts the risks of all costs resulting from delay in the supply of the Goods and/or Services and the performance of its obligations under this Contract with the exception of a delay directly caused by a breach of Dalkia of any of its obligations under this contract.

4.4 Dalkia reserves the right to alter the delivery schedule at any time without liability. If for any reason Seller does not comply with Dalkia's delivery schedule, Dalkia may cancel the Order without further liability.

### 5. INSPECTION AND ACCEPTANCE

5.1 Goods shall be deemed not to have been accepted until Dalkia has inspected the Goods, conducted acceptance tests and signified its acceptance.

5.2 If Dalkia in its sole discretion determines that Goods or Services in whole or in part do not conform to the requirements of the Contract it may (at its election) and without prejudice to any other remedies available to it:

- (a) return (at the Seller's expense) the whole or any part of the Goods for repair or replacement within the time specified by Dalkia or for credit or refund;
- (b) repair the Goods with all costs to be borne by the Seller; or
- (c) require the Seller to carry out defect rectification as provided for under the Conditions of Sub-Contract.

5.3 Where the Seller is supplying Goods to specifications, Dalkia reserves the right to inspect these items and Seller's plant



facilities at reasonable times during any stage of manufacturing.

- 5.4 The Seller must supply to Dalkia all relevant documentation (including but not limited to Manufacturer's warranties) required to enable Dalkia to make full use of the Goods and/or Services.

### 6. TITLE AND RISK

Risk of loss for Goods shall pass to Dalkia at the delivery point specified in the Order. Title to the Goods shall pass to Dalkia on dispatch of the Goods from the Seller's store.

### 7. TERMINATION

7.1 This Contract may be terminated immediately by Dalkia by written notice to the Seller if the Seller:

- breaches a provision of this Contract and in the case of a breach capable of remedy the other party fails to remedy such breach within a period of seven days after having been given written notice to that effect;
- becomes insolvent, goes into liquidation or appoints a receiver or administrator to some or all of its assets or agrees with its creditors to reschedule its debts.; or
- enters into a scheme of arrangement with its creditors or has a judgment entered against it or is declared a bankrupt.

7.2 Upon termination Seller shall deliver at its sole expense all Goods which have been paid for by Dalkia (whether wholly or partly manufactured) and then in its possession to such person or persons as Dalkia may direct.

7.3 If notice is given to Seller to terminate the Contract, Dalkia (without limiting the remedies available to it):

- may recover any sums paid to Seller on any account or for Services which have not been performed together with interest at the rate of 10% per annum from the date the sums were paid to the Seller to the date of refund;
- recover from the Seller the amount of any loss or damage sustained as a result of the termination; and
- be regarded as being discharged from any further obligations under this Contract.

7.4 Dalkia may terminate this Contract, without cause, on 30 days' written notice to the Seller.

### 8. WARRANTY

8.1 The Seller warrants it has fully satisfied itself regarding all conditions, Specifications, risks, contingencies and other circumstances in relation to the supply of the Goods or Services.

8.2 The Seller warrants that the Goods are, or will be at the time property therein is to pass, free and clear of all liens, charges and encumbrances and that the Seller has a good and marketable title to the same, and

- all Goods (including repaired or replacement items):
  - shall be free from defects in materials and workmanship and be of merchantable quality and fit for the purpose contemplated by Dalkia;
  - shall strictly conform to the Contract; and
  - shall, in the case of designs for which the Seller is responsible, be free from defects in design;
- all materials used and labour performed with respect to Services shall:
  - conform with current Australian Standard Specifications and Codes unless otherwise specified;
  - comply with all applicable laws;
  - strictly conform with the Contract; and
  - in the case of materials be fit for the purpose intended and in the case of labour be rendered with due care and skill.

8.3 If at any time before the expiry of the Warranty Period, Dalkia may inspect and test the Goods produced or supplied by the Seller and may direct the Seller to replace, rectify or re-perform any defective Goods and/or Services. Any such direction may provide that there is to be a separate warranty period commencing on the date the defective Goods and/or Services are replaced, rectified or re-performed and of a stated duration. The Seller must correct any defect in accordance with Dalkia's direction. If the Seller receives a direction to replace defective Goods, the Seller must recover the defective Goods and replace them with new Goods within 7 days of the date of notification.

### 9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

9.1 All Confidential Information furnished to Seller and all property rights embodied therein, remain the property of Dalkia, shall

be treated by Seller as confidential and shall not in whole or in part be used, communicated, copied, disclosed, sold or reproduced for any purpose whatsoever, except in the performance of the Contract, or with the express written permission of Dalkia.

9.2 On completion, cancellation or termination of the Contract, or at any time if requested by Dalkia the Seller shall immediately return to Dalkia all documents, and any other material supplied by Dalkia to Seller for purposes of the performance of the Contract embodying Confidential Information.

9.3 The Seller must ensure that no design, materials, documents and methods of working used by the Seller in the supply of the Goods and/or Services will infringe any protected rights without limitation any Intellectual Property rights.

9.4 The Seller grants to Dalkia a royalty-free, non-exclusive, irrevocable licence, including the right to sublicense to use any Intellectual Property Rights or other protected rights associated with the Goods and any documentation provided pursuant to this Contract for the installation, use, support, repair or maintenance or alteration of the Goods.

9.5 The Seller agrees that ownership of all Intellectual Property rights in any material which the Seller specifically creates or contributes to, and is required to provide to Dalkia in providing the Services under this Contract vests in Dalkia on creation. Upon request by Dalkia, the Seller must do all things necessary to perfect the vesting and ownership.

9.6 Section 9 shall survive the termination of the Contract.

### 10. PATENT, TRADEMARK & COPYRIGHT INDEMNITY

The Seller shall indemnify and forever hold Dalkia harmless from action, claim or demand, costs or expenses, arising from or incurred by reason of any infringement or alleged infringement of letters patent, design, trademark, copyright, trade secret or other protected rights in respect of any of Goods supplied by Seller, except where infringement or alleged infringement is directly caused by designs originally furnished to Seller by Dalkia.

### 11. INSURANCE AND INDEMNITY

11.1 Seller shall indemnify Dalkia from and against any and all proceedings, claims, demands, losses, costs, damage and expenses arising out of or in respect of any act, omission or negligence of Seller or any of its officers, employees, agents or representatives arising out of or in connection with the provision of Goods or Services or otherwise in connection with Seller's performance of this Contract.

11.2 The Seller must effect proper insurance against all risks and produce evidence in the form of a certificate of currency to Dalkia as follows:

- Public and product liability insurance for AUD \$20million per occurrence; and
- Workers Compensation Insurance for any amount necessary to cover any potential liability under statute or at common law;
- Property insurance covering the Supplier for any loss or damage to third party property;
- Motor Vehicle Insurance for AUD \$10million covering property damage in relation to all motor vehicles owned, leased or hired by the Supplier and used in connection with the supply of the Goods or the Supplier's other obligations under this Agreement;
- In the case of Services, Professional Indemnity Insurance for AUD \$5million for a period of six years commencing on the date of this agreement.

11.3 The Seller's liability is limited to two times the Contract Price. This limitation does not apply where a relevant insurance policy (required to be taken out and maintained under this Contract) would respond or would have responded had the Seller complied with all obligations under the relevant policy or its obligations under this Contract.

### 12. SPECIAL TOOLING

12.1 All tools, gauges, jigs, moulds, test equipment, manufacturing aids or other equipment whether furnished by the Seller or manufactured by the Seller and paid for in whole or in part by Dalkia, or which are based upon any design or process confidential or proprietary to Dalkia (hereafter called "Special Tooling") shall remain the sole property of Dalkia and Dalkia shall be entitled, upon demand, to sole and exclusive possession of any and all such Special Tooling, the cost of delivery thereof to Dalkia to be borne by Seller.

- 12.2 Special Tooling, while in the possession or control of Seller shall be kept in good working condition, and shall be insured by and at the sole expense of Seller against all risk of loss and damage with respect thereto, normal wear and tear exempted, in an amount equal to the full replacement value thereof. Special Tooling lost, partly damaged or destroyed while in the possession of the Seller shall be replaced by the Seller, free of charge, to Dalkia's satisfaction.
- 12.3 Seller shall not dispose of, mortgage, pledge, sell, lease or otherwise encumber, Special Tooling.
- 12.4 Special Tooling must be returned to Dalkia immediately upon cancellation, completion or termination of the Contract.

**13. WAIVER**

A waiver by Dalkia of a breach or default of Seller under this Contract shall not be a waiver of any subsequent default and failure of Dalkia to enforce compliance with any term or condition of this Contract shall not constitute a waiver of that term or condition.

**14. ASSIGNMENT**

The Seller shall not without the previous consent in writing of Dalkia assign or transfer this Contract or sub-contract any part of the work required to be done under this Contract.

**15. DISPUTE RESOLUTION**

- 15.1 The parties agree that if a dispute arises out of or relates to this Contract, a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this clause 15, except to seek urgent interlocutory relief.
- 15.2 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt by the other party of the notice, the matter must be referred to Seller's national sales manager and Dalkia's relevant branch or administration manager (or equivalent) as the case may be, for resolution. If the managers are unable to resolve the dispute within ten days the parties must refer the dispute to the Chief Executive Officer (or their nominee) of each party for resolution. If the Chief Executive Officers (or their nominees) cannot resolve the dispute within five days, the parties must mediate the dispute under the mediation rules of the Law Society of New South Wales and the President of the Law Society or the President's nominee will select the mediator and determine the mediator's compensation. ).

**16. OCCUPATIONAL HEALTH & SAFETY**

- 16.1 The Seller warrants and covenants that in connection with the supply of Goods or Services under this Contract, the Seller will comply with any relevant occupational health and safety legislation applicable in the jurisdiction, and applicable in each and every location in which work is performed or Services provided under this Contract.
- 16.2 In addition, the Seller shall not detract in any way from enabling Dalkia to comply with the relevant occupational health and safety legislation applicable in the jurisdiction and as such the Seller will comply with all Dalkia policies for occupational health and safety where Seller performs work or provides services at premises controlled by Dalkia. Seller will also supply to Dalkia all information relevant to the safe use of Goods or Services by Dalkia, or any other person, whether formally requested by Dalkia or not.

**18. AMENDMENT**

This Contract may only be amended in writing signed by both parties.

**19. SEVERABILITY**

If any part of this Contract or the application thereof to any person or circumstances shall become void, voidable or otherwise unenforceable, that part shall be severed and the balance of this Contract shall remain in full force and effect.

**20. GOVERNING LAW**

The laws of New South Wales govern this Contract. .

**SYDNEY** L4, 67 Epping Road, North Ryde NSW 2113. Tel: (02) 9878 8055

BRANCH OFFICES ALSO AT REGIONAL CENTRES THROUGHOUT AUSTRALIA AND NEW ZEALAND.