

## INCORPORATION OF CONDITIONS OF PURCHASE/SERVICE ORDER

Except where a separate contract has been entered into between the Purchaser and Seller, quotations provided to the Purchaser by the Seller, Purchase/Service Orders provided by the Purchaser to the Seller or Purchase/Service Orders generated by the ERP System are each deemed to include the following terms and conditions which will apply to the exclusion of any inconsistent terms or conditions sought to be imposed by the Seller.

### 1. DEFINITIONS AND INTERPRETATION

---

**1.1** In these Conditions of Purchase/Service Order ("**Conditions**") and the Special Conditions, unless the context requires otherwise:

**Business Day** any day other than Saturday, Sunday, or a public holiday in Gladstone, Queensland.

**Completion Date** means the time and date specified in the Purchase/Service Order as the time and date by which the Services are to be performed by the Seller (time being of the essence) or if no date is specified, within a reasonable time having regard to normal commercial practice.

**Date of Completion** means the date the Services are completed and performed by the Seller.

**Delivered Duty Paid** or **DDP** has the meaning given to that term in *Incoterms 2020*.

**Defects Liability Period** means, with respect of the Services, the period commencing on the Date of Completion and ending on the date falling 12 months after the Date of Completion.

**Delivery Date** means the time and date specified in the Purchase/Service Order as the time and date by which the Goods are to be supplied to the Purchaser by the Seller (time being of the essence) or if no date is specified, within a reasonable time having regard to normal commercial practice.

**ERP System** means the enterprise resource planning software, Asset Suite, used by the Purchaser to generate Purchase/Service Orders.

**Gladstone Power Station** means the power station located on Hanson Road.

**Gladstone Power Station Joint Venture** means the joint venture and each of their successors, consisting of:

GPS Power Pty Limited (ACN 009 103 422)	20%
GPS Energy Pty Limited (ACN 063 207 456)	22.125%
Sunshine State Power BV (ARBN 062 295 425)	20%
Sunshine State Power (No.2) BV (ARBN 063 382 829)	17.5%
Southern Cross GPS Pty Ltd (ACN 063 779 028)	8.5%
Ryowa II GPS Pty Limited (ACN 063 780 058)	7.125%
YKK GPS (Queensland) Pty Ltd (ACN 062 905 275)	4.75%

**Goods** means the goods (if any) specified in the Purchase/Service Order.

**GST** means the goods and services tax imposed under the *A New Tax System (Goods & Services Tax) Act 1999* (Cth). Words defined in that Act have the same meaning in these Conditions.

**Large Consignments** means any delivery that:

- (a) is greater than 2.5 tonnes in weight; or
- (b) requires the use of special lifting equipment (including a crane or forklift) in order to unload.

**Normal Working Hours** (Warehouse) means 7:30am – 9:00am, 10:00am – 12 noon and 1:00pm – 2:30pm on Monday to Friday, with the Seller taking into account the Purchaser's 9 day working fortnight, excluding:

- (a) Public Holidays; and
- (b) Thursdays afternoons after 12 noon.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and the terms "collateral", "financing statement", "financing change statement", "grantor" and "register" have the meaning given in the PPSA.

**Price** means the amount specified in the Purchase/Service Order as payable for the Goods and/or Services.

**Purchase/Service Order** means a Purchase/Service Order entered into between the Purchaser and Seller which specifies that these Conditions apply.

**Purchaser** means NRG Gladstone Operating Services Pty Ltd (ACN 061 519 275) and each of its successors and assigns, and Gladstone Power Station Joint Venture.

**Purchaser's Representative** means the representative of the Purchaser identified in the Purchase/Service Order.

**RCTI Agreement** means a Recipient Created Tax Invoice Agreement entered into between the Seller and the Purchaser, if applicable.

**Seller** means the party providing the Goods/Services, the Seller or Vendor specified in the Purchase/Service Order.

**Seller Warranties** means the warranties from the Seller, manufacturers, agents or suppliers of the Goods.

**Seller's Representative** means the representative of the Seller identified in the Purchase/Service Order.

**Services** means the services (if any) specified in the Purchase/Service Order.

**Site** means the Gladstone Power Station located on Hanson Road, Queensland.

**Sitework Conditions** means the Purchaser's sitework conditions, policies and procedures set out in Clause 8.

**Special Conditions** means any special conditions set out in a separate document executed by the Seller and Purchaser that apply of this Contract.

## **1.2 Precedence**

If there is any ambiguity, discrepancy or inconsistency between the Purchase/Service Order, the Conditions and/or the Special Conditions, the following order of precedence will apply:

- (a) Purchase/Service Order;
- (b) Special Conditions; and
- (c) these Conditions.

## **2. FORMATION OF CONTRACT**

---

**2.1** A Purchase/Service Order issued by the Purchaser to the Seller constitutes an offer by the Purchaser to engage the Seller to supply the Goods and/or the Services described in the Purchase/Service Order on the terms set out in the Purchase/Service Order, these Conditions and the Special Conditions.

**2.2** A contract for the supply of the Goods and/or the Services ("**Contract**") is formed between the Purchaser and the Seller when the Seller:

- (a) communicates either in writing or verbally with the Purchaser, the content of which confirms or implies acceptance; or
- (b) the Seller dispatches the Goods and/or commences performance of the Services.

**2.3** The Contract consists solely of the Purchase/Service Order, these Conditions, the Special Conditions and the Sitework Conditions. No terms or conditions sought to be imposed by the Seller before or after placement of the Purchase/Service Order (including terms incorporated into any tender, offer, counteroffer or proposal made by the Seller) will apply, unless expressly accepted otherwise in Special Conditions by the Purchaser.

## **3. SUPPLY OF GOODS AND/OR SERVICES**

---

**3.1** The Seller will supply to the Purchaser the Goods by the Delivery Date and/or the Services by the Completion Date.

**3.2** The Seller must comply with:

- (a) the terms of this Contract; and
- (b) the Sitework Conditions.

**3.3** Goods supplied by the Seller must:

- (a) comply with the specification or description in the Purchase/Service Order;
- (b) be new (unless otherwise specified in the Contract) and of recent origin;
- (c) be free from defects in design, manufacture and assembly;
- (d) be of merchantable quality and fit for the purpose for which they are ordinarily acquired;
- (e) when used properly, be safe and not endanger health; and
- (f) otherwise be in accordance with all relevant standards (including relevant Australian and international standards), laws and regulations.

**3.4** Services supplied by the Seller must:

- (a) comply with the specification or description in the Purchase/Service Order;
- (b) be performed with due skill, care and attention in a safe and diligent manner;
- (c) be performed by personnel who are qualified, licensed, competent and experienced in providing the Services and by the key personnel (if any) specified in the Special Conditions;
- (d) be performed in a timely manner and in accordance with the program or timetable, if any, specified in the Special Conditions (time being of the essence); and
- (e) be performed in accordance with all applicable laws, codes and standards.

**3.5** All documentation (including drawings and reports) supplied by the Seller in relation to the Goods or as part of the Services shall be accurate, comprehensive and complete.

#### **4. PRICE AND PAYMENT**

---

**4.1** Where the Seller and Purchaser did not enter into an RCTI Agreement, clauses 4.4 to 4.13 will apply and clauses 4.14 to 4.17 will not apply.

**4.2** Unless otherwise specified in the Purchase/Service Order or Special Conditions:

- (a) the Price is fixed and not subject to rise and fall for labour or material costs or any other adjustment;
- (b) the Price is inclusive of:
  - (i) all necessary packaging and delivery costs;
  - (ii) all excise, duties or taxes (including related penalties) levied or assessed by government, or otherwise payable, in respect of the Goods, except for GST;
  - (iii) all charges for supply of the Goods (and no additional charges will be raised for inspection, testing, packaging, delivering, insurance or equipment); and
  - (iv) all amounts payable for the use of intellectual property and moral rights (including licences).

**4.3** Subject to these Conditions and Special Conditions, the Purchaser will pay the Price to the Seller for supply of the Goods and/or performance of the Services. Payment will be made by electronic funds transfer or cheque.

##### **Option 1 – Standard Payment Terms**

**4.4** If any supply made pursuant to a Purchase/Service Order is a Taxable Supply, the Purchaser will pay to the Seller the GST in respect of that Taxable Supply.

**4.5** The Purchaser shall pay the Seller 30 Calendar days from the date the Purchaser inspects and accepts the Goods and /or Services and a Valid Tax Invoice is received by the Purchaser. The Seller must provide to the accounts payable department [accounts@nrggos.com.au](mailto:accounts@nrggos.com.au) of the Purchaser, upon delivery of the Goods and/or Services to the Delivery Point, a valid tax invoice.

**4.6** By delivering an invoice to the Purchaser for payment for the Goods and/or Services, the Seller warrants to the Purchaser that:

- 4.7** (i) the Goods and/or Services comply with the requirements of The Purchase Order;

- 4.8** (ii) the Seller is registered for GST; and
- 4.9** (iii) the Seller is not insolvent within the meaning of any applicable law relating to the insolvency of corporations or individuals.
- 4.10** Making a payment will not be construed as evidence or an admission that the Goods and/or Services have been supplied in accordance with The Purchase Order, but is a payment on account only.
- 4.11** Where a Valid Tax Invoice has not been delivered to the Purchaser in respect of the Goods and/or Services, the Purchaser reserves the right to return the invoice to the Seller and payment will not be made.
- 4.12** Unless otherwise provided for in The Purchase Order, the Seller must pay all taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the Purchase Order and the supply of the Goods and/or Services.
- 4.13** Unless otherwise specified in The Purchase Order, all stated amounts are GST exclusive.

#### **Option 2 – Recipient Created Tax Invoice**

- 4.14** Where the Seller and the Purchaser have entered into a RCTI Agreement and where the Purchase/Service Order relates to the supply of Goods only, clauses 4.15 and 4.16 will apply and clauses 4.5 to 4.13 will not apply.
- 4.15** The Purchaser, upon inspection and acceptance of the Goods, will make payment within 30 Calendar Days upon receipt of the Goods in accordance with the RCTI Agreement, provided that the Goods are supported with an appropriate delivery docket.
- 4.16** The Purchaser will not make payment for Goods received without an appropriate delivery docket. Where no appropriate delivery docket is provided, the Purchaser may notify the Seller to provide an appropriate delivery docket (and payment will be made within 30 Calendar Days of receipt of the docket) or that Option 1 applies.
- 4.17** Where the Purchaser and Seller has entered into an RCTI Agreement, but the Purchase/Service Order does not only relate to the supply of Goods, Option 1 will apply.

#### **5. DELIVERY OF GOODS**

---

- 5.1** The Seller must, at its own cost and risk, deliver the Goods by the Delivery Date. Deliveries are to be made at the time and at the Site specified in the Purchase/Service Order, unless otherwise agreed in writing. Time is of the essence for delivery of the Goods.
- 5.2** The Seller must, at its own cost, ensure the Goods are adequately and securely packed to avoid damage or destruction during transit. Where Goods are lost or damaged in transit, the Seller will replace the Goods at no cost to the Purchaser.
- 5.3** The Seller shall provide sufficient documents to enable the Purchaser to identify the nature and quantity of Goods delivered. All delivery documents and packages must include the Purchase/Service Order number.
- 5.4** The Seller shall not make deliveries outside the Normal Working Hours of the Site unless prior arrangement is made with the Purchaser's Representative.
- 5.5** It is the Seller's responsibility to make advance delivery arrangements with the Purchaser for Large Consignments.
- 5.6** The Seller shall deliver the goods on a Delivered Duty Paid or DDP basis.

- 5.7** Title in the Goods passes to the Purchaser upon the earlier to occur of delivery in accordance with the Contract or payment by the Purchaser for the Goods.
- 5.8** Unless otherwise specified in the Purchase/Service Order risk in the Goods is taken to pass at the time the Purchaser takes physical possession and control of the Goods at the Site. For the avoidance of doubt:
- (a) if the Seller is responsible for offloading the Goods at the Site, risk in the Goods is taken to have passed upon completion of offloading by the Seller;
  - (b) if the Purchaser is responsible for offloading the Goods at the Site, risk in the Goods is taken to have passed immediately upon the Purchaser commencing to offload the Goods.
- 5.9** If the Purchase/Service Order specifies the point of delivery by reference to Incoterms, risk is taken to pass at the time specified in the applicable Incoterm in *Incoterms 2020*.

## **6. INSPECTION, TESTING AND DEFECTS**

---

- 6.1** The Purchaser may inspect and test the Goods. Inspection and testing may be undertaken after the Goods are unpacked by the Purchaser or when Goods are installed into the Purchaser's plant or premises.
- 6.2** If, after an inspection or test, the Goods are found to be defective or otherwise fail to comply with the Contract, the Purchaser may (at its sole discretion) require the Seller to replace or repair the Goods to the Purchaser's satisfaction, or return the Goods to the Seller at the Seller's risk and expense.
- 6.3** If the Purchaser chooses to return Goods as contemplated in clause 6.2:
- (a) the Purchaser may at its sole discretion elect whether the Goods are to be collected by the Seller or transported to the Seller by the Purchaser at the Seller's risk and expense;
  - (b) upon return, the Seller shall within 10 Business Days reimburse the Purchaser for the Price paid by the Purchaser for the Goods and any costs incurred by the Purchaser in returning the Goods to the Seller.
- 6.4** Satisfactory inspection and/or testing of the Goods does not:
- (a) release the Seller from liability in relation to any defects or inadequacies in the Goods which were not actually identified during inspection or testing;
  - (b) release or waive warranties given by the Seller in relation to the Goods; or
  - (c) otherwise relieve the Seller of any of its obligations to perform the Contract.
- 6.5** The Seller must obtain, for the benefit of the Purchaser, the Seller Warranties applicable to the Goods for a period of:
- (a) 12 months; or
  - (b) any longer period set out in the manufacturer's warranty,
- whichever is longer.
- 6.6** The Seller must ensure that all Seller Warranties applicable to the Goods are transferred to the Company.

- 6.7** If in the reasonable opinion of the Purchaser the Services performed by the Seller do not meet the requirements of the Contract, the Seller shall upon request by the Company promptly re-perform the deficient part of the Services at its own cost. If the Seller fails to do so, the Purchaser may have the deficiency rectified by others and recover the costs of doing so from the Contractor.
- 6.8** Nothing in this clause reduces or otherwise affects the Seller's obligations or the Purchaser's rights under this Contract or the law.

## **7. COMPUTER SOFTWARE**

---

Where the Goods incorporate computer software, the Seller warrants that:

- (a) the software is free from viruses, trojan horses, bugs, worms or any other defects that are intended to, or do, damage or interfere with the proper working of the software;
- (b) any software maintenance, upgrade, patch or fix supplied by the Seller for the software will comply with subparagraph (a) and will be compatible with the existing version of the software; and
- (c) the Purchaser's use of the software will not infringe the intellectual property or moral rights of any party.

## **8. SITEWORK CONDITIONS**

---

- 8.1** The Seller is deemed to have examined the Site and its surrounds and accepted responsibility for any additional costs, losses and expense arising out of the physical conditions and characteristics of the Site.
- 8.2** The Seller shall comply with all Site Policies and Procedures.

The Purchaser maintains a Contractor Document Centre (CDC) site. The CDC site has Policies, Procedures and Safety/Environment Training Presentations that are relevant to Sellers. The Seller shall familiarise themselves and comply with Site Requirements for Contract Work (NRGDOC-2560-5499) while on NRGGOS site.

The website is: <https://docs.nrggos.com.au/login.aspx?ReturnUrl=%2fdoccentre%2f>

Sellers are able to access the Site by entering NRG00XXXXX as the Contract Number and their email address in the required fields.

## **9. INSURANCE**

---

Unless otherwise specified in the Purchase/Service Order, the Seller must hold insurances a prudent supplier of the Goods and/or Services would hold including:

- (a) insurances to cover physical loss or damage to the Goods;
- (b) public and third party liability insurance of not less than \$20 million per occurrence;
- (c) if professional Services are to be supplied, professional indemnity insurance in respect of the Services of not less than \$10 million per claim;
- (d) workers compensation insurance as required by law;
- (e) comprehensive motor vehicle insurance of not less than \$20 million per claim;
- (f) transit insurance of not less than the value of the Goods; and

- (g) any additional insurance required by law or requested by the Purchaser.

---

## **10. WARRANTIES**

**10.1** The Seller warrants and represents to the Purchaser that:

- (a) all performance data, measurements and specifications quoted in brochures, quotations or tenders are accurate within the tolerances (if any) specified in those documents;
- (b) it has unencumbered title to the Goods;
- (c) use of the Goods by the Purchaser will not infringe the intellectual property, moral or other rights of any third party;
- (d) it, and any person performing the Contract on its behalf, holds and will maintain all requisite licences, permits and authorities relevant to the supply of the Goods and/or Services; and
- (e) it holds all relevant import licences, consents or authorities necessary for performance of the Contract.

---

## **11. INDEMNITY**

**11.1** The Seller shall indemnify the Purchaser against any and all claims, liabilities, losses, damages or penalties in respect of:

- (a) any loss of or damage to real or personal property owned by the Purchaser or any other party;
- (b) any personal injury or death sustained by any person,

arising in any way out of the Seller's performance of the Contract or any breach by the Seller of its obligations under the Contract.

---

## **12. INTELLECTUAL PROPERTY**

**12.1** Unless otherwise specified in the Purchase/Service Order, all intellectual property and moral rights in material or documentation produced by the Seller under the Contract shall vest in the Purchaser upon creation. The Seller shall assign or transfer (and shall ensure its personnel assign or transfer) all intellectual property and moral rights and ownership of such material to the Purchaser. The Purchaser grants to the Seller an irrevocable licence to use the intellectual property for the purpose of performing the Services.

**12.2** If the Seller is an individual, the individual consents to any act or omission by the Purchaser in exercising the intellectual property or moral rights in this clause that might otherwise constitute breach of the individual's moral rights.

**12.3** The Seller indemnifies the Purchaser against any claims made by third parties in respect of the use of intellectual property in connection with any Goods and/or Services supplied under the Contract.

---

## **13. CONFIDENTIALITY**

**13.1** Subject to clause 13.2, the Seller must not, without the Purchaser's approval, disclose Confidential Information to any third party or use or reproduce Confidential Information other than strictly for the performance of the Contract.

**13.2** Clause 13.1 shall not apply to the extent the Confidential Information is:



- (a) in the public domain in the form it was disclosed or made available by or on behalf of the Purchaser (otherwise than as a result of breach of the Contract); or
- (b) required to be disclosed by law (provided the Seller first advises the Purchaser of the legal requirement for disclosure and allows the Purchaser the opportunity to seek orders preventing disclosure).

**13.3** The Seller must establish and maintain effective security to safeguard the Confidential Information and to keep Confidential Information under its control.

**13.4** On termination or completion of the Contract, the Seller must return Confidential Information to the Purchaser.

**13.5** In this clause, "**Confidential Information**" means all documents (including drafts and notes), reports, data or information of any kind, in any form, whether:

- (a) communicated orally or in writing between the Purchaser and the Seller in connection with the Contract; or
- (b) created or generated by the Seller in connection with the Contract,

and includes (but is not limited to) financial information, trade secrets, business affairs, suppliers, operations data, drawings, designs, technical information and any other information relating to the Purchaser's business.

**13.6** The Seller must not make public announcements in relation to this Contract without the Purchaser's consent.

## **14. REPORTING**

---

**14.1** The Seller must (at its cost) provide, at the Purchaser's request:

- (a) progress reports setting out, in such detail as the Purchaser requests, the different stages of design, manufacture and testing of the Goods and/or Services; and
- (b) a detailed program for the projected supply of the Goods and/or Services.

## **15. TERMINATION**

---

**15.1** The Purchaser may terminate the Contract immediately by written notice if:

- (a) the Seller is unable to pay its debts as and when they fall due;
- (b) a receiver, administrator or liquidator is appointed, or a meeting of creditors is called, in relation to the Seller or the Seller enters into an arrangement with its creditors or otherwise takes advantage of laws in force in relation to insolvent debtors;
- (c) the Seller ceases to carry on business;
- (d) the Seller or its representatives engage in conduct that, in the reasonable opinion of the Purchaser, endangers health and safety; or
- (e) the Seller or its representatives breach the Sitework Conditions.

**15.2** If either party breaches an essential term of the Contract, the other party may give notice requiring the breach to be remedied within 14 days. If the breach is not remedied, the party giving the notice may terminate the Contract.

**15.3** The Purchaser may, by notice in writing, terminate the Contract at any time. Upon receipt of a notice of termination under this clause, the Seller must cease performance of the

Contract and take all available steps to minimise loss arising from termination. The Purchaser will pay the Price for work completed up to the date of termination. The Purchaser will not be liable for any other damages or compensation for the termination.

**15.4** Termination of the Contract does not affect accrued rights or remedies.

## **16. DEFECTS LIABILITY PERIOD**

---

**16.1** This clause 16 only applies where any part of the Services relates to construction works or minor works.

**16.2** The Seller shall carry out rectification of the Services at times and in a manner causing as little inconvenience to the occupants or users of the Site as is reasonably possible.

**16.3** As soon as possible after the Date of Completion, the Seller shall rectify all defects in the Services at the Date of Completion.

**16.4** During the Defects Liability Period, the Superintendent may give the Seller a direction to rectify a defect which:

- (a) shall identify the defect and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefor (not exceeding 12 months, commencing on the date the rectification is completed and governed by this clause).

**16.5** If the rectification is not commenced or completed by the stated dates, the Purchaser may have the rectification carried out by others but without prejudice to any other rights and remedies the Purchaser may have. The cost incurred will be a debt due and payable by the Seller to the Purchaser.

## **17. PERSONAL PROPERTY SECURITIES ACT**

---

**17.1** The Seller may not register a financing statement under the PPSA against the Purchaser as grantor (a "**Registration**") except with the prior written consent of the Purchaser.

**17.2** Without limiting the rights of the Purchaser under the PPSA, if at any time there is no collateral which is subject to a Registration, then the Seller undertakes, at its own cost, to promptly:

- (a) notify the Purchaser that there is no collateral subject to that Registration;
- (b) register a financing change statement on the register to end the Registration; and
- (c) do anything the Purchaser reasonably requires (including completing and signing any document) to notify any relevant authority or other person of the end of the Registration.

## **18. DISPUTE RESOLUTION**

---

**18.1** If any dispute arises between the parties, the party wishing to enforce any right, claim or obligation under or in connection with this Contract (the **Referring Party**) must give a notice setting out reasonable particulars of the dispute (**Dispute Notice**) to the other party or parties to the dispute (the **Responding Party**).

**18.2** Within 10 Business Days of the Referring Party giving the Dispute Notice, a senior representative nominated by the Purchaser and a senior representative nominated by the Seller must meet at least once to attempt to resolve the dispute.

**18.3** If:

- (a) the senior representatives fail to meet within the time frame set out in clause 18.2; or
- (b) the senior representatives fail to resolve the dispute within 10 Business Days of the meeting set out in clause 18.2;

either party may commence court proceedings.

**18.4** Notwithstanding the existence of a dispute each party must continue to perform its obligations under the Purchase/Service Order, subject always to its rights of termination in accordance with the Contract.

## **19. GENERAL**

---

- 19.1** The relationship between the Purchaser and the Seller is one of principal and independent contractor. Nothing in this Contract shall create a relationship of joint venture, trust, employment, agency or partnership. The Seller does not have authority to contract with third parties on behalf of the Purchaser or to otherwise bind the Purchaser, unless the Purchaser's prior written consent is provided.
- 19.2** The Seller must not subcontract, assign or novate any rights or obligations under the Contract without the prior written consent of the Purchaser. The Seller hereby consents to the Purchaser assigning or novating any or all of its rights or obligations under this Contract at any time to any person.
- 19.3** The Seller acknowledges that the Purchaser may contract with any other party to supply like goods or services and no exclusive relationship exists or is to be implied by the Contract.
- 19.4** Any variation to the Contract must be in writing, signed by both parties or a revised Purchase/Service Order is issued.
- 19.5** This Contract is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of Courts of Queensland.
- 19.6** Neither party is taken to have waived any right under the Contract unless the waiver is given in writing and expressed to be a waiver.
- 19.7** The terms of the *United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention)* and the *Sale of Goods (Vienna Convention) Act 1986 (Qld)* are excluded from this Contract.
- 19.8** Any notice given under the Contract must be given in writing to the address specified in the Purchase/Service Order for the relevant party.
- 19.9** The Contract constitutes the entire agreement between the Purchaser and the Seller in relation to its subject matter.