1. INCORPORATION OF CONDITIONS

Quotations provided to the Purchaser by the Seller and Orders provided by the Purchaser to the Seller 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.

2. DEFINITIONS

In these Terms and Conditions, unless the context otherwise requires:

"Goods" means the goods or services which are the subject of a Quotation or an Order;
"Letter of Acceptance" means a letter or written purchase order or notice by the Purchaser to a Seller confirming and accepting the Seller's Quotation;
"Order" means a written order by the Purchaser for the supply of goods or services to the Purchaser;
"Person" includes a corporation, partnership and Governmental authority;
"Price" means the price for Goods specified in a Quotation or Order;
"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 owners and each of their successors and assigns;
"Quotation" means the Quotation Form issued by the Purchaser duly completed and signed by the Seller and incorporating these Terms and Conditions, and any schedules, attachments and addenda thereto;
"Seller" means a person providing a Quotation to the Purchaser or to whom an order is directed by the Purchaser and each of its successors, legal representatives and permitted assigns. The definition of a seller includes a contractor.
"Contractor" means a person providing a Quotation to the Purchaser or to whom an Order is directed by the Purchaser for the provision of services, labour, labour and materials or professional services.

3. FORMATION OF CONTRACT

(i) Quotation

Where a Letter of Acceptance has been delivered to the Seller or posted to the Seller at the Seller's address appearing on the Quotation, while the Quotation is open for acceptance, a contract will be deemed to have been formed on the terms included and deemed to be included in the Quotation, whether or not receipt of the Letter of Acceptance has been acknowledged by the Seller.
(ii) **Orders**

When an Order has been issued other than in response to a Quotation, acceptance of the Order by the Seller is deemed to have occurred:

(a) when the Seller allocates goods against the Order or takes any action to manufacture or obtain such goods for supply to the Purchaser or;

3. **FORMATION OF CONTRACT (CONT’D)**

(i) **Orders (Cont’d)**

(b) when the Seller communicates either in writing or verbally to the Purchaser in terms of which expressly or impliedly confirm acceptance, whichever is the earlier.

(ii) Orders issued other than in response to a Quotation are deemed to be revoked if not accepted by the Seller within 14 days after delivery or posting to the Seller's place of business.

4. **SPECIFICATIONS**

(i) The Goods must be supplied strictly in accordance with the specification or description set out in the Quotation or Order or, or appended thereto. No substitutes or alternatives are to be supplied without the prior approval, in writing, of an authorised officer of the Purchaser.

(ii) Performance data, measurements or other specifications or descriptions specified in suppliers' catalogues, brochures, descriptive literature, Quotations, or Orders shall form part of the contract between Purchaser and Seller and be binding on the Seller within the tolerances specified in such documents.

(iii) All goods supplied must be in accordance with any relevant Australian Standards, International Standards and applicable laws.

5. **PACKING**

(i) The Seller shall ensure Goods are adequately packaged in accordance with customary practices of carriage and all applicable laws and regulations. The cost of any packing necessary for the safe transport and storage of the Goods is deemed to be included in the Price unless specifically excluded from the Price in the Quotation or Order.

(ii) The Seller shall provide with each consignment delivery documents sufficient to enable the Purchaser to identify the contents of each package and in addition shall endorse all packages, delivery documents, and invoices with the Purchaser's purchase order number specified in the Letter of Acceptance or Order.
6. WARRANTIES

(i) The Seller warrants to the Purchaser as an inducement for the Purchaser to contract with the Seller that all Goods supplied to the Purchaser by the Seller:

(a) are free of any mortgage, lien, encumbrance or any other third party interests;
(b) are free of any defects in manufacture, design or assembly;
(c) are of good merchantable quality;
(d) are fit for use for the purposes expressed or implied in the relevant Quotation or Order; and
(e) will comply with description.

(ii) The Purchaser is entitled in respect of any breach of the warranties in this clause that becomes apparent within 12 months after acceptance of the Goods by the Purchaser to provide the Seller with a Defects Notice identifying the breach and the defective Goods. The Seller shall as soon as practicable (and in any event no later than 7 days) after receiving a Defects Notice from the Purchaser, at the cost of the Seller replace the defective Goods with suitable Goods, failing which the Purchaser will be entitled to procure the repair or replacement of the Goods at the cost of the Seller.

(iii) The Purchaser shall be entitled to set off against any moneys owing by the Purchaser to a Seller, the amount of any moneys owing by the Seller to the Purchaser under this contract.

(iv) The Seller must within 30 days after receipt of notification from the Purchaser, remove from the Purchaser's premises any defective Goods, at the cost of the Seller. If the Seller fails to do so, the Purchaser may return the Goods freight forward to the Seller.

(v) The Seller shall bear the risk of Goods the subject of a Defect Notice delivered by the Purchaser to the Seller from the time of delivery of the Defect Notice.

(vi) All services provided to the Purchaser by a Seller shall be performed in a good workmanlike manner in accordance with best industry practices.

(vii) No payment by the Purchaser to the Seller shall be construed to be an acceptance of any defective Goods or workmanship. The failure, delay, relaxation or indulgence on the part of the Purchaser in exercising any power or right conferred upon the Purchaser by these Terms and Conditions does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right conferred upon the Purchaser.

(viii) The warranties and rights provided to the Purchaser by these terms and conditions are in addition to any other warranties and rights provided or implied by law.
7. **DELIVERY**

   (i) The respective periods stipulated in the Quotation or Order for delivery or performance of Goods shall be deemed to be of the essence of the contract, and the failure of the Seller to supply in accordance with this stipulation shall entitle the Purchaser to treat such failure as breach of contract if it so desires.

   (ii) The Seller shall not make deliveries effected outside the normal working hours of the Purchaser's Stores unless prior arrangement is made with an authorised officer of the Purchaser.

   (iii) It shall be the Seller's responsibility to make advance delivery arrangements with the Purchaser for large consignments.

8. **TERMS OF PAYMENT**

   The Seller will be entitled to payment 30 days after:

   (i) inspection and acceptance of the Goods by the Purchaser; and

   (ii) receipt by the Purchaser of a fully detailed invoice quoting the Purchaser's order number specified in the Letter of Acceptance or Order, whichever is the later.

9. **INDEMNITY**

   (i) The Seller shall indemnify and keep harmless the Purchaser, its agents or employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character (including but not limited to legal fees and expenses) caused by:

      (a) any wrongful acts or any omission, fault or negligence of the Seller, or anyone acting on his behalf (including but not limited to subcontractors and vendors, their subcontractors and sub vendors, and the employees and agents of any of the foregoing), in connection with or incidental to this contract or the work to be performed; or

      (b) any defect in Goods supplied to the Purchaser by the Seller.

   (ii) Without limiting the foregoing Seller shall indemnify, keep harmless and release the Purchaser and its employees and agents from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character including but not limited to legal fees and expenses, arising out of or by reason of any injuries (including death) or damage to any person or entity employed by or acting on the Sellers behalf under this Contract, except where caused by the exclusive negligence of the Purchaser.
10. IMPORT LICENCES

If it is necessary for the performance of the contract, for the Purchaser or the Seller to hold or obtain any import license, consent, by-law exemption, or authority then either or both parties as appropriate shall be obliged to apply for same. If such license, consent, by-law exemption, or authority is refused without default of either party then the contract will be treated as being discharged and neither the Seller nor the Purchaser will be under any liability to the other.

11. PATENTS

(i) The Seller shall pay all royalties and expenses, and be liable for all claims, in respect of the use of patent rights, trade marks or copyright or other intellectual property rights, for or in connection with any goods supplied under the contract, and shall indemnify the Purchaser against all claims arising therefrom.

(ii) The Purchaser will indemnify the Seller against claims arising from infringement of patent rights, trade marks copyright or other intellectual property rights or protected rights, where such infringement results from compliance, by the Seller, with the Purchaser's instructions in relation to designs prepared by the Purchaser.

12. PROPERTY AND RISK

(i) If carriage of Goods is performed or arranged by Seller, Goods are supplied Delivered Duty Paid (as defined in the International Chamber of Commerce Incoterms 1990) within the Purchaser's store located within the Purchaser's premises at Hanson Road, Gladstone.

(ii) If the Purchaser has contracted with and nominated a carrier in the Quotation form or in the Order (as the case may be), the Goods are supplied Free Carrier (as defined in the International Chamber of Commerce Incoterms 1990) at the place nominated by the Purchaser in the Quotation form or Order (or if no place is nominated, at the Seller's store).

(iii) Title to Goods passes upon delivery in accordance with this clause 12.
13. SITE WORK

The following conditions apply where the Seller, under terms of Quotation or Order or to enable its performance, is required to be present or perform work at the Purchaser’s premises.

(a) All work shall be performed in the best workmanlike manner.
(b) Seller shall supply all labour, tools, equipment and materials necessary to complete the work and to perform this order.
(c) Seller shall not impede work in progress by Purchaser or third parties.
(d) Seller enters the site on which the work is to be performed at its own risk and indemnifies the Purchaser against loss, damage, claims and liabilities arising out of or connected with performance of this order or presence of Seller, its workmen, agents, sub-contractors, and invitees on site including claims against Purchaser whether alleging negligence on the part of the Purchaser or otherwise.
(e) Seller, its workmen, agents, sub-contractors and invitees shall comply with all safety and other regulations applicable to the site and shall obey all instructions of the Purchaser.
(f) Seller shall not sub-contract or assign work under this order which is to be performed on site without the written consent of the Purchaser.
(g) Seller performs all work under this order as independent contractor.
(h) Defective or unsatisfactory work may be replaced by the Purchaser at the Seller’s expense.
(i) The Seller at its own cost shall comply with the requirements of all applicable laws and all regulations, by-laws or others made thereunder and to the requirements of Public, Local and other Authorities affecting or applicable to the work (including but not limited to the Workplace Health and Safety Act 1995 and the WorkCover Queensland Act 1996 and regulations) and shall give all notices and shall obtain all necessary permits required thereby.
(j) The Seller shall ensure that each of its employees, agents and contractors performing the work at all times while on the Purchaser’s premises wear protective clothing and use safety equipment to the satisfaction of the Purchaser, including clothing which consists of, as a minimum, safety footwear to Australian Standard AS 2210 - type 1, 100% cotton long trousers, 100% cotton long sleeve collared shirts buttoned at the wrist, safety spectacles to Australian Standard AS 1337 and non-metallic safety helmets. The Seller shall provide all protective equipment and ensure that it is worn by the Seller's employees in accordance with the requirements of the Workplace Health and Safety Act 1995.
14. **DAMAGE OR LOST IN TRANSIT**

Where goods have either been lost or damaged in transit whilst at the Seller's risk, the Seller will, with all due diligence at the Seller's cost and as soon as practicable take all necessary action either to replace the goods or arrange repairs, whichever is mutually acceptable to the Purchaser. The Purchaser will sign all carriers' delivery documentation "subject to check" and will notify the Seller of damage or loss within 7 days of receipt and inspection of the Goods, in the case of damage, or 10 days from receipt of advice of loss, in the case of loss in transit.

15. **VARIATION**

No variation to a Quotation or Order or (subject to clause 21) to these terms and conditions will be effective without the written agreement of the Purchaser.

16. **FORCE MAJEURE**

(i) The Seller will not be held liable for breach of contract or any losses, damage or injury incurred by the Purchaser wherever performance of the contract is prevented by perils of the sea, strikes, lockouts, Acts of God, war or warlike measures whether threatened, declared or anticipated, or the outbreak of hostilities between or within nations or countries, trade sanctions or Government directives, explosions, embargoes, fire, flood, drought, sabotage or accident ("Force Majeure").

(ii) The Purchaser will not be liable for any losses damage or injury incurred by the Seller as a result of the Purchaser's inability to accept or pay for goods as a result of Force Majeure.

(iii) In the event that either party is unable wholly or in part to perform its obligations under the contract as a result of the occurrence of Force Majeure, that party shall immediately give notice to the other of the details of such occurrence, and thereupon both parties shall make arrangements and adjustments to the contract as necessary and each use their best endeavours to overcome the Force Majeure. Unless otherwise agreed in writing, upon cessation of the event affecting performance of the contract, both parties shall as far as practicable complete performance of their respective obligations under the contract.

17. **CANCELLATION**

No cancellation charges will be accepted by the Purchaser other than those which have been advised to the Purchaser prior to cancellation and which represent a genuine loss incurred by the Seller through the cancellation of an Order.

18. **ASSIGNMENT**

Neither party hereto may assign the whole or any part of the benefits or obligations of that party under this agreement without the consent of the other provided however that the consent of the other party shall not be unreasonably withheld in the case of a proposed respectable and responsible assignee.
19. **ARBITRATION**

Any dispute arising from the supply of goods by the Seller to the Purchaser shall be submitted for arbitration by one arbitrator agreed upon by the Seller and the Purchaser under the Commercial Arbitration Act 1991 and both parties agree to abide by the decision of such arbitrator.

20. **LEGAL CONSTRUCTION**

Any contract incorporating these terms and conditions shall in all respects be construed in accordance with and be governed by the laws of the State of Queensland.

21. **ADDENDA**

To the extent of any inconsistency between the terms of any addenda included in a Quotation Order or Letter of Acceptance by the Purchaser and these terms and conditions, the terms of the addenda will prevail.

22. **VIENNA CONVENTION**

The parties exclude completely the application of the United Nations Convention on Contracts for the International Sale of Goods, as contained in the Sale of Goods (Vienna Convention) Act 1986 (Qld), and any law giving force to it, to this contract or to any document incidental to, or to any act, matter or thing done under or in respect of, this contract.