

## Goods Supply Agreement

### Contract Particulars

<b>Date of Contract</b>	dd/mm/yyyy
<b>ESS</b>	ESS Engineering Services & Supplies Pty Ltd ABN 34 001 931 746
<b>ESS Address and Contact Details</b>	Address: Tel: [insert] Email: [insert]
<b>ESS Representative</b>	[insert]  (if no one stated, will mean any authorised representative notified by ESS to the Company)
<b>Purchaser</b>	[insert company name and ABN]
<b>Purchaser Address and Contact Details</b>	Address: [insert] Tel: [insert] Email: [insert]
<b>Purchaser Representative</b>	  (if no one stated, will mean any authorised representative notified by the Company to ESS)
<b>Commencement Date</b>	[insert]
<b>Term</b>	[insert]
<b>Goods</b>	As set out in Schedule 1
<b>Prices</b>	As set out in Schedule 1
<b>Delivery Terms</b>	
<b>Place for Delivery</b>	
<b>Time for submission of payment claims</b>	[insert payment regime] (if nothing stated payment claims may be submitted monthly)
<b>Insurances Required</b>	Workers Compensation \$10 m Public and Product Liability Insurance [amend as appropriate]
<b>Special Conditions</b>	[insert]  (if nothing stated there are no special conditions and the Standard Terms and Conditions apply without amendment)

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**Executed** as an agreement



Executed by ESS Engineering Services &  
Supplies Pty Ltd d

Executed by Purchaser

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Signature of Authorised Representative

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Signature of Authorised Representative

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Name of Authorised Representative

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Name of Authorised Representative

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Position

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Position

## Standard Terms and Conditions

### 1 Term and Exclusivity

- 1.1 This Contract commences on the Commencement Date and continues for the Term unless terminated in accordance with clause 18 .
- 1.2 This Contract is non-exclusive, and ESS may supply Goods to any third party in its absolute discretion.
- 1.3 ESS and the Purchaser will meet annually to discuss the performance of this Contract.

### 2 Purchase and delivery of Goods

- 2.1 The Purchaser may order Goods by submitting a Purchase Order to ESS. Within 5 Business Days of receipt of an Order ESS will notify the Purchaser of its acceptance or otherwise of a Purchase Order.
- 2.2 The Purchase Order must reflect any agreed freight and minimum order quantities set out in the Particulars and as specified in the Price List unless otherwise agreed in writing between the parties.
- 2.3 Unless expressly agreed by ESS in writing, these Terms and Conditions override any quotes, purchase orders, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Terms and Conditions. These terms will be deemed to have been accepted by the Purchaser placing a Purchase Order
- 2.4 In the event of any inconsistency between the Particulars and these Terms and Conditions the Particulars will prevail.

### 3 General performance obligations

- 3.1 The Purchaser must:
  - (a) promptly notify ESS of any incident, injury, property damage or environmental damage which occurs during the delivery of the Goods;
  - (b) promptly inform ESS of any circumstance which gives rise to an obligation to notify a relevant authority under Safety Legislation and of any such notification made by the Purchaser.

### 4 Delivery of the Goods

- 4.1 ESS will use all commercially reasonable efforts to deliver the Goods for which it has accepted a Purchase Order to the Point of Delivery in accordance with the Delivery Terms specified in the Particulars, and in compliance with the Purchase Order.
- 4.2 ESS may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with clauses 7 and 8.
- 4.3 ESS is not liable for any Loss whatsoever due to the failure by ESS to deliver the Goods (or any of them) promptly or at all.
- 4.4 ESS may invoice the Purchaser for storage, insurance and any other holding charges incurred by ESS if delivery of the Goods is delayed by the Purchaser.
- 4.5 While on the other party's premises, each party must comply, and require its agents and subcontractors to comply, with the other party's policies, procedures and any other site instructions and all applicable laws, including "chain of responsibility" laws.
- 4.6 The Purchaser must as soon as possible after delivery, check the Goods. In the event of a suspected shortages, incorrect or damaged goods the Purchaser must, within 48 hours of delivery, provide written notice to ESS accompanied by documentation and samples demonstrating that the Goods do not comply with this Contract (**Notice of Defect**).
- 4.7 The Purchaser shall be deemed to have fully and finally accepted all the Goods without objection or reservation if a Notice of Defect is not delivered to ESS by the Purchaser in strict accordance with this clause. In the event the Goods do not comply with this Contract and the Purchaser timely delivers to ESS a Notice of Defect in accordance with this clause, ESS shall, at its option:
  - (a) deliver, free of charge, replacement Goods; and / or
  - (b) refund the Purchaser the amount actually paid for the defective portion of the Goods not replaced by ESS.
- 4.8 The performance of ESS's obligations under this clause shall be the Purchaser's sole and exclusive remedy and constitute ESS entire obligation and aggregate liability to the Purchaser for defective Goods.

## 5 Risk and title

- 5.1 Risk in the Goods passes to the Purchaser in accordance with the Delivery Terms or if no such terms are stated on Delivery.
- 5.2 Title in the Goods passes to the Purchaser upon payment of the Invoice.

## 6 Recall of Goods

- 6.1 If either party becomes aware that it is necessary or desirable to withdraw any Goods from the marketplace because:
- (a) the Goods do not comply with the requirements of this Contract;
  - (b) the Goods do not comply with relevant Laws and/or applicable industry codes;
  - (c) the Goods are defective or damaged; or
  - (d) a relevant authority has ordered or directed, or is likely to order or direct, that the Goods be withdrawn;
- that party must immediately notify the other party of that fact.
- 6.2 In addition to the rights set out in clause 6.1, ESS may recall Goods for any reason in its absolute discretion.
- 6.3 ESS is responsible for carrying out any recall of Goods and will bear the costs of any recall of such Goods unless the need for the recall is caused by the Purchaser's negligence.
- 6.4 Subject to clause 6.3, the Purchaser will cooperate with ESS with respect to the recall of any Goods, at the Purchaser's cost, unless the need for the recall is caused by ESS negligence.

## 7 Price and GST

- 7.1 In consideration for the supply of the Goods, the Purchaser will pay ESS the Price calculated in accordance with this Contract.
- 7.2 ESS may amend the Price List from time to time by giving the Purchaser 30 days prior written notice.
- 7.3 Regardless of any other provision of this Contract, if *GST* is imposed on any *Supply* under or in accordance with this Contract, the amount to be paid for the *Supply* will be increased by the amount of the *GST*.
- 7.4 A party's right to payment under this Contract for any *Taxable Supply* is subject to a valid *Tax Invoice* being delivered to the party liable to pay for the *Taxable Supply*.
- 7.5 Expressions in italics in this clause 7 have the same meaning as those expressions in the GST Act.

## 8 Invoices and Payment

- 8.1 ESS will submit invoices to the Purchaser at the times set out in the Particulars and if no such time is set out monthly. Subject to clause 8.2 the Purchaser must pay the invoices in accordance with the method and requirements set out in the Particulars or if nothing is set out within 30 days.
- 8.2 If the Purchaser in good faith, disputes the whole or part of the amount claimed in a tax invoice, the Purchaser:
- (a) may withhold payment of the amount that is in dispute until the dispute is resolved. On resolution of the dispute any amounts due or owed will be paid within 7 days;
  - (b) must pay the portion of the amount stated in the tax invoice which is not in dispute; and
  - (c) must notify ESS in writing within 10 Business Days after receipt of the tax invoice of the reasons for the dispute.
- 8.3 Any payment or debt due and owing by the Purchaser to ESS under this Contract may be deducted by ESS from any moneys payable by ESS to the Purchaser on any account.
- 8.4 The Purchaser acknowledges that if the account is overdue, ESS at its' discretion, reserves the right to refer the account to a third-party agency for collection, and agrees that all costs chargeable by the agency (as if the account had been collected by the agency) will be added to the account and legal costs incurred by ESS to collect the account will be recoverable "on an indemnity basis" and will form part of the debt.

## 9 Confidentiality and Privacy

- 9.1 The Purchaser must not, without the prior written consent of ESS disclose any ESS Confidential Information, except to the extent that the ESS Confidential Information is:
- (a) disclosed by the Purchaser to its advisers and financiers on a confidential basis;

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- (b) disclosed by the Purchaser to its employees, officers or agents who are subject to an obligation of confidentiality in order to carry out its obligations, or enforce its rights, under this Contract; or
- (c) authorised or required to be disclosed by law or under this Contract.

### 9.2 The Purchaser must:

- (a) upon request by ESS, ensure that all parties who will receive or who will have access to ESS Confidential Information execute a document in a form specified by ESS, by which they are bound to maintain confidentiality in the same manner and to the same extent as the Purchaser, before the information is disclosed, or access to it granted;
- (b) use its best endeavours to cause its employees, agents, officers and other third parties who receive or have access to ESS Confidential Information to observe all of the Purchaser's obligations and undertakings contained in this clause 9; and
- (c) implement proper systems and procedures as may be necessary and as are required by ESS to maintain the confidentiality of its Confidential Information.

9.3 The Purchaser is responsible for the disclosure of any ESS Confidential Information by anyone whom it discloses ESS Confidential Information to as if the actions of that person were the actions of the Purchaser.

9.4 Upon termination or expiry of this Contract, the Purchaser must deliver to ESS all material comprising ESS Confidential Information and delete all copies electronically stored subject to record keeping requirements by state and federal laws and acts.

9.5 The obligations under this clause 9 continue, notwithstanding the expiry or termination of this Contract. Nothing in this clause 9 derogates from any obligation which either party may have either under the Privacy Act.

## 10 Intellectual Property Rights

10.1 Nothing in this Contract grants any right, title or interests in any Intellectual Property of a party.

10.2 All Intellectual Property created or developed in the course of this Contract vests on creation in ESS and the Purchaser will do all things necessary to give effect to the vesting of all Intellectual Property in ESS.

## 11 PPSA

11.1 Terms used in this clause 11 are as defined in the PPSA, unless the context indicates otherwise.

11.2 The Purchaser agrees that ESS will have a Purchase Money Security Interest in the Goods; consents to ESS registering any security interest under a Contract on the PPS Register; irrevocably and unconditionally waives its right to receive any notice from ESS under the PPSA; and agrees not to allow a security interest to be created over the Goods in priority to that held by ESS.

11.3 Notwithstanding anything in the PPSA, the parties agree to keep confidential the contents of a Contract and related material.

## 12 Indemnity

12.1 The Purchaser must defend, indemnify and hold ESS, its representatives, employees and agents (**Indemnified Parties**) harmless from and against any and all Loss, whether ordinary, special or consequential (including loss of profits), arising directly or indirectly from or in connection with:

- (a) death of or bodily injury including illness to persons connected with an act or omission of the Purchaser or Purchaser Personnel;
- (b) loss of or damage to tangible property connected with any act or omission of the Purchaser or Purchaser Personnel;
- (c) the wilful misconduct, fraud or fraudulent misrepresentation of the Purchaser or the Purchaser Personnel;
- (d) the negligent acts or omissions of the Purchaser or the Purchaser Personnel;
- (e) a breach of any of the Purchaser's warranties given in this Contract or obligations under this Contract;
- (f) a breach by the Purchaser or the Purchaser Personnel of any applicable laws; and
- (g) a breach of confidence or a breach of clause 9 by the Purchaser or any Purchaser Personnel;

12.2 except to the extent that any such Loss arises directly due to an act or omission of any of the Indemnified Parties.

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- 12.3 The Purchaser agrees that each indemnity given in clause 112.1 is held by ESS on behalf of, and on trust for, each of the Indemnified Parties and can be enforced by ESS for the benefit of each of the Indemnified Parties in the name of ESS or in the name of any of the Indemnified Parties.
- 12.4 Neither party will have any liability for any Loss incurred by the other party to the extent that the other party failed to mitigate against that Loss.

## 13 Insurance

- 13.1 ESS must obtain and maintain during the Term the types of insurance policies set out in the Particulars (if any) with reputable insurers as well as all other insurances that a reasonable and prudent business person would maintain.
- 13.2 In addition to clause 13.1, the Purchaser must take out and maintain during the Term, workers compensation and/or employers' liability insurance for an amount required by the relevant State or Territory legislation.

## 14 Limitation of Liability

- 14.1 To the extent that the Purchaser acquires Goods as a consumer within the meaning of Schedule 2 of the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law), the Purchaser may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by the Contract. Nothing in this clause 14 operates to exclude, restrict or modify the application of any condition, warranty or provision implied by law, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, where to do so would contravene that statute; or cause any term of this Contract to be void (**Non-excludable Obligation**).
- 14.2 To the extent permitted by law, ESS liability in respect of Non-excludable Obligations is limited to:
- (a) the repair or, if necessary, the replacement of, the Goods; and
  - (b) the supplying again of any services supplied under this Good.
- 14.3 Except in relation to Non-excludable Obligations, and to the extent permitted by Law all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute are expressly excluded under this Contract.

## 15 Liability exclusions

- 15.1 Notwithstanding any other provision of this Contract, ESS shall have no liability to the Purchaser (whether for breach of contract, under indemnity, negligence or on any other legal or equitable basis) for loss of use, profit, revenue, business, data, contract or anticipated benefit or saving, or for any delay financing costs or increase in operating costs or for any special, indirect or consequential loss. Otherwise, ESS maximum aggregate liability to the Purchaser (whether for breach of contract, under indemnity, negligence or on any other legal or equitable basis) is limited to the Price of the Purchaser Order which is subject to the claim.

## 16 Termination

- 16.1 Either party may, by notice in writing to the other party, terminate this Contract in whole or in part with effect on and from the date specified in the notice if the other Party:
- (a) suffers an Insolvency Event;
  - (b) ceases, or threatens to cease, to carry on its business.
- 16.2 ESS may terminate this Contract or a Purchase Order with effect from the date specified in the notice, if the Purchaser fails to comply with this Contract and the breach is:
- (a) not capable of remedy; or
  - (b) capable of remedy, but is not remedied within 10 Business Days, after being given written notice to do so.
- 16.3 ESS may by written notice to the Purchaser at the option of ESS suspend or terminate this Contract (effective immediately on good of such notice or on such later date specified in the notice) if the Purchaser fails to comply with Safety Legislation or Safety Requirements and the failure is continuing or repeated or a single event that causes a serious risk to the health or safety of any person.
- 16.4 Either party may, at its discretion and for any reason, by providing the other party with written notice equivalent to the Termination Notice Period (specified in the Particulars), terminate this Contract.
- 16.5 If this Contract is terminated or expires:

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- (a) The Purchaser must pay ESS for any Goods supplied in accordance with this Contract as it applied immediately prior to the date of termination or expiry;
- (b) if, before the end of this Contract, the Purchaser made any payment in advance to ESS for which it has not received Goods, the amount of that payment must be immediately repaid to the Purchaser by ESS; and
- (c) all licences and consents relating to or concerning this Contract granted to the Purchaser by ESS, terminate immediately despite anything to the contrary contained in the relevant, licence or consent.

16.6 The Purchaser may terminate this Contract with effect from the date specified in the notice, if ESS fails to comply with its obligations under this Contract and the breach is not remedied within 30 Business Days after being given written notice by the Purchaser to do so.

## 17 Dispute Resolution

- 17.1 If a dispute arises in connection with this Contract, a party to the dispute must give to the other party or parties to the dispute, notice specifying the dispute and requiring its resolution under this clause 117 (Notice of Dispute).
- 17.2 The senior managers with authority to resolve the dispute of each party must confer within 7 days after the Notice of Dispute is given to try and resolve the dispute.
- 17.3 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party (First Period), the dispute is by this clause submitted to mediation.
- 17.4 The mediation must be conducted in Perth. The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (at the date of this Agreement) as amended by this clause 117 apply to the mediation, except where they conflict with this clause 117. Representation can be made via telephone or other electronic means.
- 17.5 If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period:
- (a) the mediator is the person appointed by; and
  - (b) the remuneration of the mediator is the amount or rate determined by;
  - (c) the President of the Law Society of Western Australia (**President**) or the President's nominee, acting on the request of any party to the dispute.
- 17.6 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- 17.7 This clause 117 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

## 18 Miscellaneous clauses

- 18.1 A notice or other communication connected with this Contract (**Notice**) has no legal effect unless it is in writing. In addition to any other method of notice provided by law, the Notice may be sent by prepaid post to, or delivered at, the address of the addressee set out in this Contract or subsequently notified by the relevant party from time to time. If the Notice is sent or delivered in a manner provided by this clause 118.1, it must be treated as given to and received by the party to which it is addressed:
- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting; or
  - (b) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 18.2 The obligations of the parties are suspended during the time and to the extent that they cannot comply with them by Force Majeure.
- 18.3 The application of the Sale of Goods (Vienna Convention) Act 1986 (WA) is excluded.
- 18.4 An amendment or variation to this Contract is not effective unless it is in writing and signed by the parties.
- 18.5 The Purchaser may not assign or transfer any of its rights or obligations under this Contract except with the prior written consent of ESS, which consent must not be unreasonably withheld.
- 18.6 ESS may assign or transfer any of its rights or obligations under this Contract subject to providing written notice to the Purchaser. The Purchaser must sign all documents and do all things reasonably necessary to effect such assignment or transfer.



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- 18.7 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Contract.
- 18.8 Termination or expiry of this Contract does not relieve any party from that party's obligations that are expressed to or by their nature are intended to survive expiry or termination.
- 18.9 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 18.10 This Contract is the entire agreement and understanding between the parties on everything connected with its subject matter, and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 18.11 Each party has entered into this Contract without relying on any representation (whether or not negligently) by any other party or any person purporting to represent that other party.
- 18.12 If any provision in this Contract is unenforceable, illegal or void or makes this Contract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Contract remains in force.
- 18.13 Any term by its nature intended to survive termination of a Contract survives termination.
- 18.14 Where this Contract contemplates that a party may agree or consent to something (however it is described), the party may agree or consent, or not agree or consent, in its absolute discretion, and agree or consent subject to conditions.
- 18.15 This Contract is governed by the law in force in Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia.
- 18.16 This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Contract. This Contract is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by facsimile machine or by email:
- (a) must be treated as an original counterpart;
  - (b) is sufficient evidence of the execution of the original; and
  - (c) may be produced in evidence for all purposes in place of the original.

## 19 Interpretation

- 19.1 Reference to:
- (a) the singular includes the plural and the plural includes the singular;
  - (b) a party includes the party's executors, administrators, successors and permitted assigns;
  - (c) a thing includes the whole and each part of it separately;
  - (d) a statute, regulation, code or other law or a provision of any of them includes: any amendment or replacement of it; and another regulation or other statutory instrument made under it, or made under it as amended or replaced;
  - (e) dollars means Australian dollars unless otherwise stated;
  - (f) "Including" and similar expressions are not words of limitation.
- 19.2 Where a word or expression is given a particular meaning, including in the Particulars, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 19.3 Headings are for convenience only and do not form part of this Contract or affect its interpretation.
- 19.4 A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of the provision in this Contract.
- 19.5 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- 19.6 If a party consists of more than 1 person, this Contract binds each of them separately and any 2 or more of them jointly. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly. A party which is a trustee is bound both personally and in its capacity as a trustee.



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19.7 The provisions of the Particulars prevail over the terms and conditions set out in this **Error! Reference source not found.** to the extent of the inconsistency.

## 20 Definitions

20.1 In this Contract:

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

**Contract** means these terms and conditions, the Particulars and any schedules to these terms and conditions.

**Corporations Act** means the Corporations Act 2001 (Cth).

**ESS Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is designated by ESS as confidential;
- (c) information comprised in or relating to any of ESS intellectual property rights;
- (d) information relating to the internal management and structure or operating financial information of ESS;
- (e) information provided by ESS and incorporated into any training materials in relation to the Goods (regardless of whether those training materials are owned by the Purchaser); and
- (f) information relating to contractors or good providers to ESS or its customers;

but does not include information which:

- (g) is or becomes public knowledge other than by breach of this Contract, or any confidentiality obligation or the Privacy Act; or
- (h) has been independently developed or acquired by the Purchaser as established by written evidence.
- (i) TUI Group means ESS and its Related Entities.

**Force Majeure Event** means any events or circumstances beyond the reasonable control of a party including:

- (a) acts of God, including landslide, cyclones, flood, earthquake, fire, hurricanes, typhoons, lightning and induction caused by lightning, tornadoes, hailstorms, ice or ice storms and tsunamis;
- (b) epidemic or quarantine;
- (c) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government Agency;
- (d) ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel;
- (e) state or nation wide industrial action or dispute which is not directed at the affected party or any of its Related Entities;

but only where such events or circumstances:

- (f) are not caused by an act or omission of the affected party or any of its Related Entities;
- (g) are beyond the reasonable control of the affected party or its Related Entities; and
- (h) could not have been avoided or overcome by the affected party or any of its Associates taking reasonable precautions or steps.

**GST** means GST as defined in the GST Act.

**GST Act** means A New Tax System (Goods and Goods Tax) Act 1999 or any other relevant legislation and regulations.

**Insolvency Event** means the happening of any of these events in relation to a party (Defaulting Party):

- (a) the Defaulting Party suspends payment of its debts;

- (b) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act;
- (c) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
- (d) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days); or
- (e) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act.

**Intellectual Property Rights** means all current and future intellectual and industrial property rights and interests throughout the world, whether or not registered, registrable or patentable, including trademarks, designs, patents, inventions, plant breeder's rights, copyright and analogous rights, circuit layout rights, Confidential Information, trade secrets, know-how and the right to apply for registration of, or any application for, such rights, but excludes Moral Rights.

**Law** means:

- (a) statutes, regulations, by-laws, ordinances and subordinate legislation;
- (b) approvals, authorisations, consents, exceptions, licences, permits, determinations, certificates or registrations and the like of or from any Government Agency, including any renewal or variation;
- (c) common law and equity;
- (d) requirements of Government Agencies; and
- (e) guidelines of the Commonwealth, State and local governments and Government Agencies with which the Supplier is legally required to comply.

**Loss or Losses** means any loss, damage (whether direct or indirect), liability, cost or expense including legal expenses on a solicitor and own client basis.

**Moral Rights** means any right of attribution of authorship, right not to have authorship falsely attributed, or right of integrity of authorship, as or other analogous rights arising under any applicable law (including Part IX of the Copyright Act 1968).

**Particulars** means the Contract Particulars set out in this Contract.

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**Price** means the amount set out in the Purchaser Order calculated in accordance with the **Price List** and this Contract.

**Price List** means the price list for the Products set out Schedule 1 for the Goods as amended by ESS from time to time.

**Privacy Act** means the Privacy Act 1988.

**Related Entity** has the meaning given to it in the Corporations Act.

**Safety Legislation** means any:

- (a) legislation applicable to work health and safety, environmental protection and electricity safety;
- (b) regulations made under that legislation; and
- (c) directions or notices issued by any relevant authority under that legislation.

**Safety Requirements** means any written or oral direction, instruction, request or requirement of ESS relevant to compliance by ESS or the Purchaser with Safety Legislation.

**Purchaser Personnel** means the officers, employees, contractors and agents of the Purchaser.

**Term** has the meaning given to it in clause 11.1.



External Form

## Schedule 1 –Goods and Price List

[Insert Goods and Price List]