

1. Application of these Conditions

- 1.1 These Conditions apply to each supply of Goods and/or Services by the Supplier to SAPN pursuant to a Purchase Order. Where there is no other applicable written and signed agreement and the Supplier accepts (or is deemed to accept) a Purchase Order (in writing, verbally, by electronic transmission, by part performance or by other conduct), the Supplier enters a separate and independently terminable agreement with SAPN in relation to the Goods and/or Services referred to in the Purchase Order on these Conditions, the Supply Chain Specification and the terms in the relevant Purchase Order (referred to in these Conditions as the **'Contract'**).
- 1.2 No contrary or other conditions purported to be included in the Contract by the Supplier (whether in its quote, delivery confirmation, invoices or otherwise) will apply to the Contract or in substitution to the Contract unless expressly accepted in writing by SAPN.
- 1.3 Any inconsistencies between the documents forming part of the Contract shall be resolved in the following order of priority: firstly, any special conditions in the Purchase Order; secondly, any other details and attachments to the Purchase Order; thirdly, these Conditions.

2. Definitions and Interpretation

In these Conditions and the Contract, unless a contrary intention is apparent:

"Chain of Responsibility legislation" means the road safety regime contained in State, Territory and Commonwealth legislation that provides that all parties who commission the carriage of goods or the provision of services by or involving heavy vehicles on roads may be held liable for breaches of road safety, and road related laws applicable to the performance of the Supplier's obligations under the Contract and/or vehicles used in the course of the Supplier performing those obligations.

"Conditions" means this document;

"Contract" has the meaning given in clause 1.1 above;

"Customer Group" means:

- (i) SAPN;
- (ii) Enerven Energy Infrastructure Pty Ltd ACN 621 124 909;
- (iii) Enerven Energy Solutions Pty Ltd ACN 621 147 297;
- (iv) each related body corporate of the persons referred to in paragraphs (i), (ii) or (iii) of this definition; and
- (v) each officer, agent, employee, contractor and sub-contractor of the persons mentioned in paragraphs (i), (ii), (iii) or (iv) of this definition (other than the Supplier and its Personnel);

"Eligible Data Breach" means any unauthorised access to, unauthorised disclosure of, or loss of, Personal Information disclosed to the Supplier or its Personnel by any member of the Customer Group or any Personal Information derived from or incorporating such Personal Information, and includes an eligible data breach or similar expression as may be defined in the Privacy Act from time to time;

"Goods" means those goods (if any) supplied, or to be supplied, by the Supplier pursuant to the relevant Purchase Order;

"Intellectual Property Rights" means any and all intellectual or industrial property rights anywhere in the world including any patent, copyright, design or trade mark, any right to registration of any patent, copyright, design or trade mark, or any other similar or other like right, including rights to trade secrets, know-how, proprietary or confidential information;

"on a Free In Store basis" means delivery to such location as SAPN nominates, in all respects at the cost of the Supplier;

"Personal Information" has the meaning given in the Privacy Act;

"Personnel" means, in respect of a party, that party's officers, agents, employees, contractors and sub-contractors but does not include the other party or the other party's Personnel;

"Privacy Act" means the Privacy Act 1988 (Cth);

"Price" means the price for Goods and/or Services specified in the relevant Purchase Order (and includes all taxes, duties, charges, levies and fees payable);

"Purchase Order" means a written purchase order for Goods and/or Services issued to the Supplier by or on behalf of SAPN which by reference incorporates these Conditions;

"SAPN" means the partnership known as "SA Power Networks" between Spark Infrastructure SA (No.1) Pty Ltd ABN 54 091 142 380, Spark Infrastructure SA (No.2) Pty Ltd ABN 19 091 143 038, Spark Infrastructure SA (No.3) Pty Ltd ABN 50 091 142 each incorporated in Australia, CKI Utilities Development Limited ABN 65 090 718 880, PAI Utilities Development Limited ABN 82 090 718 951 each incorporated in The Bahamas;

"SAPN's requirements" means SAPN's requirements in relation to the supply of the Goods and/or the Services, as advised by SAPN to the Supplier;

"Services" means those services (if any) to be performed by the Supplier pursuant to the relevant Purchase Order;

"Supplier" means, in relation to the Contract, the supplier or vendor referred to in the Purchase Order;

"Supply Chain Specification" means the supply chain specification which specifies the Customer Group's

minimum end to end supply chain requirements from time to time, and which is made available at www.sapowernetworks.com.au/vendorterms "Tax Invoice" means an invoice that meets the requirements prescribed by the Australian Taxation Office and SAPN from time to time.

3. Sale, Delivery and Installation

3.1 The Supplier must:

- (i) supply the Goods to SAPN free of encumbrances;
- (ii) deliver the Goods to SAPN on a Free In Store basis within the agreed time (such time being of the essence), or if no time is agreed, within a reasonable time from the date of the relevant Purchase Order;
- (iii) unload the Goods and where SAPN carries out that unloading, it is carried out on behalf of the Supplier and is at the Supplier's risk; and
- (iv) install the Goods, in all respects as directed by SAPN.

3.2 The Supplier must complete provision of the Services by the date for completion agreed with SAPN and time shall be of the essence in respect of such date. If no date has been agreed, the Supplier must complete provision of the Services within a reasonable time of the date of the relevant Purchase Order.

4. Testing, Acceptance and Rejection

4.1 SAPN may test the Goods (including at the Supplier's premises) as it sees fit before, at and after delivery and installation.

4.2 In the event that the Goods and/or Services delivered or performed (as applicable) do not satisfy SAPN (acting reasonably and having regard to SAPN's requirements and the Contract), SAPN may reject the Goods by written notice to the Supplier and in addition to any other right may:

- (i) require the Supplier to reimburse to SAPN the Price (or any part) paid in respect of such unacceptable Goods or Services; or
- (ii) require the Supplier to replace the unacceptable Goods or re-perform the Services in a reasonable time required by SAPN to the satisfaction of SAPN in accordance with the Contract; or
- (iii) if the Supplier does not comply with the foregoing, have a third party re supply the Goods or re perform the Services at the Supplier's cost.

4.3 Subject to the foregoing, SAPN will accept the Goods upon being satisfied that the Goods comply with the Contract, are fully functional and meet SAPN's requirements.

4.4 If SAPN rejects the Goods, risk in the Goods remains with the Supplier and the Supplier must immediately remove the Goods from SAPN's premises at the Supplier's cost.

5. Price, Taxes, Variations and Concessions

5.1 The Supplier must bear all customs and import duties (including anti-dumping duties) levied.

5.2 If the Price is in Australian currency, but is specified as being subject to variation by reason of any change in the relative value of the Australian dollar and the currency of another nation ("**foreign currency**"), then when seeking payment of the Price, the Supplier must provide SAPN with evidence satisfactory to SAPN of:

- (i) the portion of the Price that is subject to variation, including all applicable customs documentation; and
- (ii) any relevant payment by the Supplier in the foreign currency.

5.3 If the Price is specified as being payable in a foreign currency, then:

- (i) SAPN will pay the Price in the foreign currency into the Supplier's nominated Bank account; and
- (ii) the Supplier must provide such evidence relating to its obligation to pay for the Goods or the Services in the foreign currency as SAPN may require.

5.4 The Supplier shall ensure that any invoice or other request or demand for payment shall constitute a tax invoice under the relevant GST legislation enabling SAPN to claim input tax credits in respect of the supplies to which the invoice relates and shall include reference to the relevant Purchase Order number.

5.5 The Price will not be subject to variation unless a variation formula is set out in the relevant Purchase Order. If the Price is subject to variation, and the Supplier claims an amount is due by reason of an event contemplated by the variation formula, the Supplier must satisfy SAPN of its entitlement to such variation. SAPN will only consider a variation claim if the Supplier:

- (i) claims the amount of the variation as soon as practicable; and
- (ii) provides all and any information required by SAPN to verify the Supplier's entitlement to the payment of any additional amount.

5.6 No variation to a subsequent invoice will be permitted on account of any variation the Supplier was entitled to but did not claim in respect of a previous invoice.

6. Customs

SAPN may make applications for customs or import duty concessions that it considers appropriate. If any such application is successful, and the Price includes an amount for customs or import duty at a higher rate, SAPN may deduct the difference from the Price payable to the Supplier under these Conditions.

7. Payment

7.1 Upon acceptance of the Goods by SAPN or completion of the Services to SAPN's requirements (as the case may be), the Supplier must provide a correctly rendered Tax Invoice referencing the relevant Purchase Order number to SAPN's Accounts Payable department at the following details:

Email:
accountspayable@sapowernetworks.com.au or
post,
Accounts Payable
SA Power Networks
GPO Box 77, ADELAIDE SA 5001

7.2 Subject to receipt of a correctly rendered Tax Invoice and subject to the Supplier's compliance with the Contract in all respects, SAPN will pay the Supplier the Price pursuant to the payment terms specified in the relevant Purchase Order and these Conditions.

8. Title and Risk

Title to and risk in the Goods will pass to SAPN on acceptance.

9. Warranties

- 9.1 The Supplier warrants that the Goods will:
- (i) unless otherwise agreed with SAPN prior to the date of the relevant Purchase Order, be new on delivery to SAPN;
 - (ii) conform with any description applied to the Goods and any sample of them provided by the Supplier;
 - (iii) meet SAPN's requirements, the requirements in the relevant Purchase Order and be fit for the purpose of those requirements;
 - (iv) be free of any defects in materials, workmanship or installation;
 - (v) be of merchantable quality and conform to any legally applicable standards; and
 - (vi) be manufactured and constructed in accordance with the quality assurance program specified in the relevant Purchase Order (if any).
- 9.2 Without limiting any other provision of these Conditions:
- (i) if a defect appears in the Goods in the 24 months or such other period as may be specified in a Purchase Order ("**Warranty Period**") from the date on which they are accepted by SAPN then at SAPN's sole discretion either:
 - (a) the Supplier must remedy the defect (at SAPN's option) by repairing or replacing the Goods without charge to SAPN; or
 - (b) SAPN will remedy the defect by repairing or replacing the Goods and invoice the Supplier for any costs incurred by SAPN; and
 - (c) in either case SAPN may invoice the Supplier for any direct costs incurred by SAPN arising from the defect;
 - (ii) the costs of and incidental to the repair, rectification or replacement of defective Goods (including re-delivery) will be paid by the Supplier; and
 - (iii) any Goods repaired or replaced during the Warranty Period shall have a further warranty period of equivalent duration from the date of the repair or replacement.
- 9.3 The Supplier warrants that the Services, the Goods, and any other services provided in connection with

the Goods, do not and will not infringe the Intellectual Property Rights of any person.

- 9.4 The Supplier warrants that the Services (and any services provided in connection with the Goods) will be performed by appropriately qualified and experienced personnel with all due care and skill, in accordance with all applicable law and best industry practice and in such manner as meets SAPN's requirements.
- 9.5 If the Supplier breaches the warranties referred to in this clause 9, SAPN may at its option and without prejudice to any of its other rights:
- (i) require the Supplier to remedy the breach, including by re-supply of the Goods and/or Services; or
 - (ii) terminate the Contract immediately by notice in writing.

10. Sub-contracting and Assignment

- 10.1 The Supplier may not assign or sub-contract the performance of any matter or thing required by the Contract without the prior written consent of SAPN (which may be withheld or granted subject to conditions).
- 10.2 Any subcontracting of the Supplier's obligations under the Contract does not relieve the Supplier of any of its obligations under such Contract and the Supplier will be liable to SAPN for the acts and omissions of its subcontractors and any of that subcontractor's Personnel as if they were the Supplier's acts or omissions.

11. Confidentiality and Privacy

- 11.1 The Supplier must keep confidential all terms of the Purchase Order and all information from or concerning SAPN (or its business practices) that it acquires as a result of any dealings with SAPN.
- 11.2 The Supplier will ensure that any Personal Information supplied by SAPN will be protected by the Supplier against misuse and loss, and from unauthorised access, modification or disclosure in the same way as if the Supplier was bound by the requirements of the Australian Privacy Principles under the Privacy Act, regardless of whether or not the Supplier is subject to the Privacy Act. The Supplier will ensure that any subcontractor of the Supplier is bound to comply with privacy obligations equivalent to those of the Supplier under the Contract.
- 11.3 Without limiting the other provisions in this clause 11, if the Supplier is, or becomes, aware that there has been an Eligible Data Breach or there are reasonable grounds to suspect or believe that there may have been, or has been, an Eligible Data Breach in respect of Personal Information, the Supplier must forthwith notify SAPN, not notify any other person of the Eligible Data Breach (except to the extent that it is required to do so at law) and comply at its own cost with all reasonable directions of SAPN in respect of such Eligible Data Breach.

12. Termination

- 12.1 If the Supplier breaches the Contract or any other Purchase Order, or if it advises SAPN that it is not, or

will not be able to, perform all of its obligations under the Contract, then subject to any other provision of the Contract, and without limiting any other right or remedy SAPN may have arising from such breach or advice, SAPN may terminate the Contract (and any or all other Purchase Orders) by written notice.

- 12.2 Any additional cost to SAPN of acquiring replacement Goods or Services from a third party will be an amount due by the Supplier to SAPN immediately on SAPN making demand for that amount.
- 12.3 SAPN may, at any time, cancel the whole or any part of the Purchase Order. Such cancellation will extinguish any further obligation of SAPN to the Supplier under the Contract (other than payment of that portion of the Price in respect of Goods or Services already supplied or performed as at the date of cancellation).
- 12.4 Termination, completion or expiry of the Contract for any reason shall not extinguish or otherwise affect any rights of either party against the other which accrued prior to the time of the termination, completion or expiry or otherwise relate to or may arise at any future time from any breach or non-observance of obligations of the Contract which arose prior to the time of the termination, completion or expiry. The provisions of the Contract which, by their nature, survive termination, completion or expiry will continue to survive (including without limitation clauses 4.4, 9.2, 11.1, 13.1, 13.6 and 14.4).

13. Indemnities and Insurance

- 13.1 The Supplier indemnifies and must keep indemnified SAPN and its Personnel from and against any and all liabilities, expenses, costs, losses or damage suffered or incurred by SAPN or its Personnel that arises out of or as a consequence of:
- (i) physical loss or damage to property of SAPN or any third party or contributed to be the acts or omission of the Supplier or its Personnel;
 - (ii) any breach of the Contract (including any breach of warranty) by the Supplier, or any negligent act or omission or wilful misconduct of the Supplier or its Personnel;
 - (iii) the insolvency of the Supplier, or any claim against SAPN or its Personnel by the Supplier's Personnel arising as a result of a matter between the relevant person and the Supplier;
 - (iv) any defect or non-compliance in the Goods or the Services.
- 13.2 Except in respect of injury to or death of any person (for which no limit applies), the liability of the Supplier under the indemnity in this clause 13 is limited to TEN MILLION DOLLARS (\$10,000,000.00) for each event.
- 13.3 The Supplier must effect and maintain for a period of not less than seven (7) years after the expiration or termination of a Contract:
- (i) a professional indemnity insurance policy to cover claims by SAPN against the Supplier

arising out of or incidental to any act or omission by the Supplier in connection with the carrying out of the Services;

- (ii) public liability and product liability insurance policies to cover all liability to third parties for personal injury (including illness), death, property damage and economic loss; and
 - (iii) an insurance policy against any liability at law which the Supplier may have to any of its employees, or have self-insured status pursuant to the *Return to Work Act 2014* (SA).
- 13.4 The insurance policy referred to in clause 13.3(i) will be for not less than one million dollars (\$1,000,000) for any one event and the insurance policy referred to in clause 13.3(ii) will be for not less than ten million dollars (\$10,000,000) for any one event unless otherwise specified in the relevant Purchase Order.
- 13.5 The Supplier must provide evidence to SAPN of the currency of its insurance policies referred to in clause 13.3 upon request by SAPN.
- 13.6 The Supplier shall be responsible for any indirect or consequential liability or loss suffered or incurred by SAPN as a result of the Supplier breaching any provision of the Contract.
- 13.7 SAPN holds each indemnity given by the Supplier under this Contract for and on behalf of each member of the Customer Group.

14. Compliance with Laws

- 14.1 The Supplier must obtain all necessary approvals, authorisations and licences required in order to perform and comply with its obligations under the Contract and without limiting the foregoing, must comply with (and must ensure that any officer, employee, agent, contractor or sub-contractor of the Supplier complies with):
- (i) all applicable laws (including without limitation laws in respect of work health and safety and all relevant Chain of Responsibility Legislation); and
 - (ii) the requirements of any relevant government agency,
- in supplying the Goods, performing the Services and carrying out its obligations under the Contract.
- 14.2 The Supplier must, when reasonably requested by SAPN, provide such information as SAPN reasonably requires to satisfy itself that the Supplier is compliant (and that any officer, employee, agent, contractor or sub-contractor of the Supplier is compliant) with this clause 13.7.
- 14.3 Upon any reasonable request from SAPN from time to time, and at no charge to SAPN, the Supplier must provide to SAPN any information in connection with these Conditions that SAPN requires in order to comply with any law, policy or government reporting requirement.
- 14.4 The law of South Australia applies to the Contract. The Supplier submits to the exclusive jurisdiction of the courts of South Australia and any court of appeal from any of them.

15. Record Keeping

- 15.1 The Supplier must keep full, true, up to date and proper records and books of account (“Records”) regarding the Goods and Services provided under this Contract.
- 15.2 The Supplier must provide SAPN with a copy of such Records within seven (7) days of any request by SAPN, together with such further information in respect of the Supplier’s performance of this Contract, the Supplier’s Personnel and the Supplier’s financial position as may be requested by SAPN.
- 15.3 The Supplier will retain Records for seven (7) years after completion of the Contract.
- 15.4 SAPN (or its representative) may audit the Records and the Supplier will ensure it and its Personnel assist and co-operate in the undertaking of any such audit.

16. Work Health and Safety

Without limiting any other obligation of the Supplier under the Contract, the Supplier must (and must ensure that its Personnel) comply in every respect with any and all requirements, directions, policies and procedures of SAPN regarding work health and safety and any person’s use of, or access to, SAPN’s premises and will promptly notify SAPN in writing of any incident or accident occurring on SAPN’s premises.

17. Vienna Convention

Where the Supplier is incorporated outside the Commonwealth of Australia, SAPN acknowledges that subject to these Conditions, the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 applies to the Contract.

18. Trusts

In the event that the Supplier enters into a Contract as trustee of a trust (whether or not such trust is disclosed to SAPN), it is liable both in its own right and as trustee of such trust.

19. Set Off

- 19.1 The Supplier must make payment in full of all amounts owing by the Supplier to SAPN under the Contract, any other agreement, or at law without any deduction, set off, counter-claim or retention of any money.
- 19.2 Without prejudice to any other rights of SAPN, SAPN may withhold, deduct or set off any of the following from or against any amount owing by SAPN to the Supplier under the Contract, any other agreement between the parties, or at law:
- (i) any amount owing by the Supplier to SAPN for any reason;
 - (ii) any bona fide claim for payment of an amount which SAPN considers will become a debt due and payable by the Supplier to SAPN;

- (iii) any amount agreed by the Supplier as due to SAPN, or finally awarded in arbitration, litigation or expert determination in favour of SAPN; or
- (iv) the amount of any claim for loss, damages, costs or expenses which has been or may be incurred by SAPN by reason of any breach of or failure to observe the provisions of the Contract by the Supplier, or any other agreement between the parties, or at law.

19.3 Any amount set-off under the previous sub-clauses is without prejudice to the rights of SAPN in any subsequent negotiations, arbitration, litigation or expert determination to seek to vary the amount set-off.

20. Terms which may operate unfairly

If the Contract is a Small Business Contract and a term of the Contract would, but for this clause, be Unfair, SAPN may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect SAPN’s legitimate interests. In this clause, capitalised terms not defined in these Conditions have the meaning given in the *Australian Securities and Investments Commission Act 2001* (Cth).

21. Exclusion of Proportionate Liability scheme

To the maximum extent permitted by law, the operation of any law (including without limitation the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA)) which imposes or provides for a scheme of proportionate liability or apportioning liability between concurrent wrongdoers is excluded from the Contract and cannot be relied upon by either party to the Contract.

22. Ring Fencing

- 22.1 To the extent that the Ring-Fencing Guideline applies to the provision of any Goods or Services under this Contract, the Supplier will comply with clauses 4.1, 4.2.1, 4.2.2, 4.3.2 and, in relation to the Supplier’s branding, clause 4.2.3 of the Ring-Fencing Guideline as if the reference in such clauses to “DNSP” was a reference to the Supplier.
- 22.2 In this clause 22.1, Ring-Fencing Guideline means the Ring-Fencing Guideline (Electricity Distribution) issued November 2016 by the Australian Energy Regulator as may be updated, replaced or reinstated from time to time.

23. Governing Law

The Contract is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia.