

## Plant Hire General Conditions

### 1. GENERAL

- 1.1. These are the terms and conditions regulating the interaction between Energex and the party referred to in the Purchase Order (**Supplier**) the terms and conditions are comprised of these general conditions and the Purchase Order (including any special conditions contained in that Purchase Order) (**Agreement**).

### 2. WHOLE AGREEMENT

- 2.1. The Agreement constitutes the entire agreement between the parties as to the hire of various items of dry and wet hire plant (Services) as set out in the Purchase Order.
- 2.2. This Agreement supersedes all prior representations and agreements in connection with the performance of the Services. No quotation, confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Supplier in relation to the performance of Services will vary this Agreement. The acceptance of, or payment for, the Services by Energex does not constitute acknowledgement or acceptance of the Supplier's terms and conditions.
- 2.3. Acceptance of these terms by the Supplier occurs when the Supplier accepts the Purchase Order in writing or performs the Services (whichever occurs first).
- 2.4. Energex may, for convenience and without cause, immediately cancel a Purchase Order and terminate this Agreement (in whole or in part) at any time by written notice to the Supplier.

### 3. AGREEMENT TO PERFORM SERVICES

- 3.1. The Supplier agrees to perform the Services and Energex agrees to accept the Services on the terms set out in this Agreement.

### 4. PRICE AND PAYMENT

- 4.1. The price for the Services is fixed to the amount set out in the Purchase Order. Energex must consent in writing to any variations to price.
- 4.2. Unless otherwise stated, prices include all applicable duties, impost, levies and taxes, delivery to the Site nominated by Energex, packing, crating and insurance.
- 4.3. To be paid, the Supplier must submit an invoice which states its name, reference number, item number, description of the Service provided, the amount claimed and contain such other details as Energex may reasonably require.
- 4.4. The Supplier's invoice must be a Tax Invoice, and must:

- (a) where Services are charged on a time basis, be supported by records of time spent by individual persons in performance of the Services;
- (b) provide documentary evidence of the payment of moneys due and payable to employees of the Supplier and any subcontractors in respect of performance of the Services;
- (c) specify the relevant item numbers from the price list for any additional services performed by the Supplier (but only for those additional services which have been authorised by Energex);
- (d) specify the location(s) and/or Energex site identifier(s) to which the invoice applies;
- (e) state the number of operating hours of the equipment used by the Supplier in the performance of the Services; and
- (f) contain such other details as Energex may reasonably require, and for the avoidance of doubt, this would include details and results of any audits performed by the Supplier in relation to elements of the Services included in the invoice.

- 4.5. Terms of payment are 30 days from the end of the month in which the Supplier's invoice is received.

### 5. ACCEPTANCE OF SERVICES

- 5.1. The Supplier must perform the Services at the Site by the Delivery Date during normal business hours or at any other time agreed between the Supplier and Energex, failing which Energex may cancel the Purchase Order(s) in whole or in part.
- 5.2. All Services delivered by the Supplier are subject to inspection and acceptance by Energex.

### 6. WORK HEALTH AND SAFETY

- 6.1. Work health and safety obligations:
- (a) The Supplier must ensure that all Services are carried out in accordance with Work Health and Safety Law.
  - (b) Without limiting paragraph (a), the Supplier must at all times:
    - (i) discharge its duties under Work Health and Safety Law; and
    - (ii) ensure its officers, employees, agents and subcontractors and its subcontractors' officers, employees and agents (**'Supplier's Personnel'**) discharge their respective duties under Work Health and Safety Law, in connection with the performance of the Services.
  - (c) The Supplier must:
    - (i) develop and implement in connection with the performance of the Services a safety management system which incorporates a safe system of work, work method statements and plans necessary to ensure the performance of the Services is carried out safely and in compliance with Work

- Health and Safety Requirements ('**Safety Management System**');
- (ii) provide to Energex a copy of the Safety Management System before commencing the performance of any Services;
  - (iii) constantly review and update the Safety Management System as necessary throughout the period of this Agreement and immediately provide Energex with a copy of any updated Safety Management System; and
  - (iv) ensure that the Safety Management System, as a minimum, ensures the requirements of all other Work Health and Safety Requirements (including those provided for or on behalf of Energex) are fully met;
- (d) The Supplier must ensure that the Supplier and Supplier's Personnel:
- (i) comply with the directions of Energex (or any other person nominated by Energex as having the authority to give directions ('Energex's Nominee')) in connection with health and safety;
  - (ii) consult fully with Energex and Energex's Nominee in respect of:
    - (A) any matter relevant to health and safety; and
    - (B) without limiting subparagraph (A), how the performance of the Services can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the performance of the Services;
  - (iii) complete a full site induction program which complies with the requirements of the Agreement and Work Health and Safety Requirements before commencing the performance of the Services;
  - (iv) comply strictly with the Work Health and Safety Requirements;
  - (v) throughout the period of the Agreement maintain all qualifications, competencies and licences:
    - (A) held at the commencement of the performance of the Services; or
    - (B) required by Work Health and Safety Requirements;
  - (vi) consult fully with Energex or Energex's Nominee in respect of, and demonstrate to Energex or Energex's Nominee, compliance by the Supplier and Supplier's Personnel with the requirements of this clause 14 and Work Health and Safety Requirements;
  - (vii) maintain adequate records of all health and safety matters (including in accordance with Work Health and Safety Requirements);
  - (viii) audit the Supplier's health and safety records and compliance with Work Health and Safety Requirements regularly and whenever requested by Energex and provide to Energex a copy of the findings of that audit; and
  - (ix) satisfy themselves as to, and only treat as minimum requirements, those Work Health and Safety Requirements prepared or provided by or on behalf of Energex.
- (e) Energex may at any time conduct its own audit of the Supplier's health and safety records and compliance with Work Health and Safety Requirements (including the Supplier's Safety Management System) and the Supplier must:
- (i) co-operate fully with Energex in connection with that audit (including by providing all necessary access, relevant documents or other information); and
  - (ii) immediately address and ensure the Supplier's Personnel address any issues identified by Energex from its audit and notified to the Supplier.
- (f) The Supplier must immediately notify Energex of:
- (i) any breach or potential breach by the Supplier or any Supplier's Personnel of Work Health and Safety Requirements; or
  - (ii) any notice or direction received by the Supplier or any Supplier's Personnel under or in connection with Work Health and Safety Law (including by providing a copy of the notice or direction to Energex).
- (g) Despite any other provision of the Agreement, Energex's rights under the Agreement relating to health and safety (including without limitation the rights under this clause 6, to give directions to the Supplier, carry out an audit of the Supplier's records or practices, provide, approve or review any plan or other document to be implemented or relied upon by the Supplier (including any Work Health and Safety Requirements) or exercise rights of suspension or termination under the Agreement) ('Safety Enforcement Rights'):
  - (i) are for the benefit of Energex;
  - (ii) may be exercised by Energex in its absolute discretion (without Energex being under any obligation to do so); and
  - (iii) do not prejudice or otherwise affect the Supplier's full responsibility for ensuring strict compliance with all of the Supplier's obligations under the Agreement and under Work Health and Safety Requirements.
- (h) The Supplier must provide to Energex and also to any person who the Supplier is aware has been or will be engaged by Energex to undertake any activities relating to the performance of the Services ('Relevant Contractors'), all information relevant to the performance of the Services:
  - (i) required to be disclosed by the Supplier in the discharge of its duties under Work Health and Safety Law; or
  - (ii) received (or which should have been received) by the Supplier or any

subcontractor of the Supplier from any other person required to disclose the information to the Supplier or any subcontractor in the discharge of that person's duties under Work Health and Safety Law.

- (i) The Supplier must indemnify and keep indemnified Energex and its officers, employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss, penalty, fine or other liability (including without limitation under the general law (including under contract, in tort (including negligence) or in equity), under statute or otherwise), arising from or in connection with any breach by the Supplier of its obligations under this clause 6 or any Work Health and Safety Requirements.

## 7. GOODS AND SERVICES TAX

- (a) **Goods and Services Tax**  
Any Consideration to be paid or provided for any supply made under or in connection with this Agreement, unless expressly described in this Agreement as including GST, does not include an amount on account of GST. Despite any other provision in this Agreement, if a party ('Supplier') makes a Taxable Supply under or in connection with this Agreement on which GST is imposed:
  - (i) the GST exclusive Consideration otherwise payable or to be provided for that Taxable Supply under this Agreement but for the application of this clause is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and
  - (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.
- (b) **Reimbursements**  
If a payment to a party under or in connection with this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.
- (c) **Adjustment Events**  
If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Agreement, a corresponding adjustment must be made between the parties in respect of any amount

paid pursuant to clause 7(a). Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

- (d) **GST Group**  
If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.
- (e) **Non-Monetary Consideration**  
If a supply made under this Agreement is a Taxable Supply made for non-monetary consideration then:
  - (i) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
  - (ii) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Agreement is GST inclusive.
- (f) **Definitions**  
Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related imposition and amending Acts have the same meaning in this clause.
- (g) **Survival**  
This clause will continue to apply after expiration or termination of this Agreement.

## 8. SUPPLIER OBLIGATIONS

### 8.1. The Supplier must:

- (a) in performing the Services, comply with:
  - (i) the Minimum Standards;
  - (ii) all relevant Laws;
  - (iii) any material conditions imposed as a consequence of any applicable Authorisations;
  - (iv) the Energex Standard Requirements; and
  - (v) the terms and conditions of the Agreement;
- (b) unless otherwise stated in the Agreement, provide at its sole cost and expense all goods, equipment, spare parts, labour and services necessary to perform the Services; and
- (c) be responsible for investigating and resolving to the reasonable satisfaction of Energex, any complaint made by a member of the public about the way in which the Supplier performs any element of the Services.
- (d) use its best endeavours at all times to faithfully and honestly discharge its duties in the course of providing the Services to Energex;
- (e) comply with all reasonable requests and directions of Energex or its Personnel in connection with its duties and responsibilities under this Agreement (including in undertaking any necessary orientation or induction and complying at all times with Energex's site safety, and other policies, procedures and protocols);
- (f) provide Energex with such information as may be required by it from time to time;

- (g) ensure that the warranties set out in this Agreement are and remain true and correct at all times;
- (h) obtain and maintain at all times necessary regulatory approvals and hold all other licences, qualifications, permits and authorisations necessary for, or incidental to, providing the Services;
- (i) comply with (and ensure that all of the Supplier's Personnel comply with) all reasonable directions and requirements of Energex while on Energex's Site;
- (j) provide the Services:
  - (i) with all due care and skill;
  - (ii) in a proper, competent and professional manner;
  - (iii) in a timely and expeditious way;
  - (iv) and in a way which will prevent injury or death of persons and damage or destruction to property; and
- (k) comply with and ensure that it or its Personnel do not breach, any Laws.

#### 8.2 The Supplier:

- (a) is solely responsible for the cost of repairs resulting from any damage attributable to its performance of the Services, including damage to water mains, drains, roads, fences, gates, culverts, grids, electric power mains, telephone lines and any other utilities;
- (b) must rebuild, without delay, any fences it may damage and in all cases make temporary arrangements to restore any fence to its former effectiveness immediately following the occurrence of the damage;
- (c) must carry out repairs to the satisfaction of Energex, the property owner and any relevant public authority or utility;
- (d) is directly responsible for the prevention of all littering by their personnel; and
- (e) must cause all litter (including papers, tins, bottles and rags) to be cleaned up daily from areas where it is performing the Services and disposed of in the nearest approved refuse disposal area.

### 9. INSURANCE

- 9.1. The Supplier must hold all insurances reasonably necessary for the performance of its business and promptly provide such evidence as Energex reasonably requires confirming this coverage.

### 10. WARRANTIES

- 10.1. Without limiting any conditions or warranties implied by Law, and regardless of whether Energex has accepted the Services, the Supplier represents and warrants to Energex that:
  - (a) it has and will continue (for as long as it has any obligation or liability under the Agreement) to have the requisite power and authority to enter into and perform its obligations and discharge its liabilities under the Agreement;
  - (b) it has taken all necessary action to authorise the execution, delivery and performance by it of the Agreement;

- (c) the Agreement and the obligations created by it are binding obligations of that party; and
- (d) all consents necessary to be obtained by it in relation to the execution, delivery, performance, validity or enforceability of the Agreement have been obtained or effected and are in full force and effect

#### 10.2 The Supplier warrants that:

- (a) the information (where relevant) provided in its tender and during tender clarification meetings was:
  - (i) complete;
  - (ii) accurate; and
  - (iii) not misleading in any material respect;
- (b) it will, at all times, use employees and contractors who are:
  - (i) suitably trained, qualified and experienced; and
  - (ii) appropriately licensed and authorised in accordance with relevant Laws, to perform the Services; and
- (c) the Services will be performed in accordance with:
  - (i) the Agreement;
  - (ii) best practice standards of diligence, skill, care and efficiency expected of a competent Supplier performing services of a similar nature to the Services; and
  - (iii) all the requirements of authorisations and Laws affecting or applicable to the performance of the Services.

- 10.3 The representations and warranties set out in clauses 10.1 and 10.2 survive the termination of the Agreement and remain in full force and effect so long as is necessary to give effect to them.

### 11. DEFECTS LIABILITY

#### 11.1 The Supplier:

- (a) must at its expense, re-perform any deficient or defective Services notified by the Supervising Officer during the Defects Liability Period; and
- (b) is responsible for any damage to the property of Energex resulting directly or indirectly from any deficient or defective Services or the re-performance of those Services for a period of 12 months after the Services are completed.

- 11.2 If the Supervising Officer considers that the Supplier has not re-performed Services within a reasonable time after receiving notice of the deficiency or defect, the Supervising Officer may, without prejudice to any other rights of Energex, take any action considered necessary to rectify the deficiency or the defect and cost incurred by the Supervising Officer in doing so will be a debt due from the Supplier to Energex.

- 11.3 Without prejudice to the Supplier's obligations under the Agreement and, in particular, this clause 11, all guarantees and warranties obtained by the Supplier from Subcontractors must be extended to Energex to the full extent of their terms. If required by the Supervising Officer, the Supplier must procure the assignment of these guarantees or warranties to Energex.

## 12. INDEMNITY

12.1 The Supplier indemnifies Energex (and its Personnel) against all claims, costs, expenses, damages, loss or other liability arising out of or in connection with the carrying out of the Services, except to the extent directly caused by the negligence of Energex.

12.2. The Supplier acknowledges that if it enters on to the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

## 13. DEFAULT

13.1. In addition to Energex's other rights and remedies, Energex may, by written notice to the Supplier, cancel any order with immediate effect if the Supplier:

- (a) becomes insolvent or a resolution is passed for the winding up of the Supplier;
- (b) fails to supply the Services by the nominated Delivery Date;
- (c) commits a breach of these terms that, in the opinion of Energex, is incapable of being remedied.
- (d) the Supplier has failed to comply with an obligation relating to safety including, without limitation, any of the Work Health and Safety Requirements which, in the opinion of Energex, is of a significant nature justifying termination of the Agreement;

13.2. Upon termination of this Agreement no party has further rights or obligations under this Agreement, except rights and obligations accruing prior to termination.

## 14. INTELLECTUAL PROPERTY

14.1. The Supplier is responsible for obtaining and maintaining all industrial and intellectual property rights in connection with any goods used in performing the Services and indemnifies Energex and its Personnel against all Loss from a claim by a third party that the goods and/or Services supplied, or the use of those goods and/or Services breaches any third party rights.

14.2. Except as required by Law, the Supplier must not (and must ensure that its Personnel do not) disclose any information about Energex's technical and commercial operations without Energex's prior written consent.

## 15. WITHOLDING TAX

15.1 Whenever the Supplier does not have a valid ABN or Energex otherwise reasonably considers itself bound to do so, Energex shall be entitled to withhold from any payment otherwise due to the Supplier under or in connection with the Supply, tax calculated and to be held in accordance with *the Taxation Administration Act 1953 (Cth)*.

15.2 The Supplier warrants that it is not an entity covered by Schedule 1, 12-315(2) of the *Taxation Administration Act 1953 (Cth)* ('Foreign Resident'). If requested by Energex the Supplier must provide Energex with evidence to

Energex's satisfaction that the Supplier is not a Foreign Resident, failing which Energex shall be entitled to withhold from any payment otherwise due to the Supplier under or in connection with the Supply, tax calculated and to be held in accordance with the *Taxation Administration Act 1953* in respect of Foreign Residents.

## 16. OTHER CONTRACTORS

16.1 The Supplier must ensure that:

- (a) the performance of the Services does not materially interfere with the performance of works being undertaken by Energex or any other contractors on the Site; and
- (b) its activities do not materially interfere with the activities of businesses or persons occupying land adjacent to or in the vicinity of the Site.

## 17. SUBCONTRACTING

17.1 The Supplier must not subcontract to any person the performance of any of its obligations under the Agreement without the prior written approval of Energex.

17.2 In seeking approval from Energex to subcontract the performance of its obligations under the Agreement, the Supplier must:

- (a) provide to Energex written particulars of the Services to be subcontracted and the name and address of the proposed Subcontractor; and
- (b) any other information which Energex reasonably requests.

17.3 Approval may be conditional upon the Subcontract including:

- (a) a provision that the Subcontractor must not assign nor subcontract without Energex's written consent; and
- (b) provisions which may be reasonably necessary to enable the Supplier to fulfil the Supplier's obligations under the Agreement.

17.4 Approval to subcontract will not relieve the Supplier from any liability or obligation under the Agreement and the Supplier is liable to Energex for the acts, defaults and omissions of any of its subcontractors as if they were those of the Supplier.

## 18. OTHER TERMS

18.1 The Supplier must make sure that all information provided by Energex is treated as confidential and is only used in connection with the supply of Services, the subject of the Purchase Order.

18.2. Energex will not have any liability to the Supplier for Consequential Loss.

18.3. No amendment to these terms is valid or binding unless made in writing and signed by all parties.

18.4. Nothing in this Agreement constitutes any relationship of employer and employee, principal and agent or partnership between Energex and the Supplier.



- 18.5. The Supplier must not assign the benefit of this Agreement or any rights under this Agreement without the consent in writing of Energex.
- 18.6. A waiver by Energex of a breach of these terms is only effective if in writing and is not a waiver of any other breach.
- 18.7. Energex may set-off or reduce any amount owed to the Supplier against any claim Energex may have against the Supplier on any account.
- 18.8. This Agreement is governed by the laws of Queensland.

#### 19. DEFINITIONS

In these terms:

**Consequential Loss** means any special, indirect or consequential damage or loss, any economic loss in respect of a claim in tort, any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, damage to credit rating, loss of goodwill or wasted overheads whatsoever or any Loss in respect of any claim by any third party.

**Delivery Date** means the date set out in the Purchase Order or otherwise agreed.

**Energex** means Energex Ltd (ABN 40 078 849 055).

**Energex Standard Requirements** means Energex's standard requirements, as amended from time to time, regarding:

- (a) quality assurance standards;
- (b) safety procedures;
- (c) the environment ;
- (d) customer care;
- (e) any other standard reasonably required by Energex and advised to the Supplier.

**Laws** include: any statute, regulation, subordinate legislation or common law (including the principles of equity) of the Commonwealth of Australia and Queensland (as relevant) and any industry-specific codes of conduct or standards as applied from time to time.

**Loss** means liabilities, expenses, losses, claims, damages, and costs (on a solicitor and own client basis and whether incurred or awarded against that company) whether past, present, future or contingent.

**Minimum Standards** means the minimum standards described in the SWPs, WCSs, Good Engineering Practice or any standard applicable and where more than one standard applies, then the higher of these standards.

**Personnel** means in respect of a party, the employees, agents, invitees, consultants, permitted contractors and permitted subcontractors of the party (and includes their respective employees and agents).

**Safety Management System** is as defined in clause 6.

**Services** means the services to be performed by the Supplier as set out in the Purchase Order.

**Site** means the location for performance of the Services or for the delivery of the Goods as set out in a Purchase Order.

**Subcontractor** means any person engaged by the Supplier to perform any part of the Services.

**Supervising Officer** means the person appointed by Energex as the Supplier's key point of contact for the Services.

**Tax Invoice** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Work Health and Safety Law** means any Laws relating to health and safety including *the Work Health and Safety Act*

*2011 (Qld)* and the *Work Health and Safety Regulation 2011 (Qld)*.

**Work Health and Safety Requirements** means:

- (a) any Work Health and Safety Law;
- (b) the Safety Management System required to be provided by the Contractor under clause 6; and
- (c) the requirements of:
  - (i) Energex Standard Requirements;
  - (ii) Minimum Standards;
  - (iii) any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of performing the Services under the Service Agreement or to be installed as part of the performance of the Services; or
- (iv) any other provision of the Agreement relating to health and safety.