

Energex

PQS1014 – STANDARD TERMS AND CONDITIONS

CONSTRUCTION SERVICES – CATEGORY 1014

Energex Limited
4 June 2015



positive energy

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Contact details

Energex Limited
GPO Box 1461 Brisbane QLD 4001
26 Reddacliff Street Newstead QLD 4006
Telephone 13 12 53
www.energex.com.au

Energex Limited ABN 40 078 849 055

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1 General

- 1.1 The Contractor has been Pre-Qualified by Energex to undertake Construction Services - Category 1014 and the parties have signed the Pre-Qualification Agreement (PQA). Energex will engage the Contractor to undertake Construction Services - Category 1014 through issuing Work Orders or entering into an Instrument of Agreement.
- 1.2 These are the terms and conditions regulating the interaction between Energex and the Contractor when the Contractor is providing Construction Services – Category 1014 to Energex under a Work Order. In that instance, the terms and conditions of purchase are comprised of these general conditions of purchase and the Work Order (including any special conditions contained in that Work Order) (Agreement).
- 1.3 If the parties enter into an Instrument of Agreement in relation to the construction task then these terms and conditions will not apply and the terms and conditions for provision of those Goods and/or Services will be as set out in the Prequalification section of Energex’s website.
- 1.4 The PQA and this Agreement constitute the entire agreement between the parties as to the purchase of Goods and/or Services. This Agreement supersedes all prior representations and agreements in connection with the supply of Goods and/or performance of Services.
- 1.5 Acceptance of these terms by the Contractor occurs when the Contractor accepts the Work Order in writing or supplies the Goods and/or performs the Services (whichever occurs first).

2 Agreement to Sell Goods and/or Services

- 2.1 The Contractor agrees to sell the Goods and/or perform the Services and Energex agrees to purchase the Goods and/or accept the Services on the terms set out in this Agreement.

3 Price and Payment

- 3.1 The prices for the Goods and/or Services (as set out in the Work Order) are fixed. Energex must consent in writing to any variation to price.
- 3.2 Unless otherwise stated, prices include all applicable duties, impost, levies and taxes, delivery to the Site nominated by Energex, packing, crating and insurance.
- 3.3 To be paid, the Contractor must submit an invoice which states its name, Reference Number, item number, description of the Service or Goods provided, the amount claimed and contain such other details as Energex may reasonably require.
- 3.4 Terms of payment are 30 days from the end of the month in which the Contractor’s invoice is received.

4 Risk and Title

- 4.1 Full unencumbered title to, and property in any Goods passes to Energex on the earlier of delivery and Energex making any payment for materials, but risk in the Goods remains with the Contractor until Energex has accepted them by notice to the Contractor of acceptance.

5 Delivery and Acceptance

- 5.1 The Contractor must deliver the Goods to, or perform the Services at, the Site by the Delivery Date during normal business hours or at any other time agreed between the Contractor and Energex, failing which Energex may cancel the Work Order(s) in whole or in part.
- 5.2 All Goods and/or Services delivered or provided by the Contractor are subject to inspection and acceptance by Energex.
- 5.3 Energex accepts the Goods and/or Services if:
- (a) Energex advises the Contractor in writing that the Goods and/or Services have been accepted (but signing for delivery does not constitute acceptance); or
 - (b) Energex has not rejected the Goods and/or Services within 14 days of delivery or performance (as the case requires).
- 5.4 Despite title and/or risk passing under clause 4.1, Energex may reject the Goods or Services if:
- (a) any warranties provided by the Contractor are, in Energex's reasonable opinion, untrue; or
 - (b) the Goods and/or Services are not of merchantable quality or unfit for Energex's purpose or defective or not in accordance with the provisions of this Agreement or any samples provided to Energex or specifications referred to in the Work Order.
- 5.5 Any Goods rejected must be removed from the Site at the Contractor's cost.
- 5.6 If the Goods are damaged or destroyed prior to delivery, Energex may cancel the relevant Work Order and is entitled to recover the whole or part of any payment made in relation to the damaged or destroyed Goods.

6 Goods and Services Tax

- 6.1 If a party (Supplier) makes a Taxable Supply on which GST is imposed, where the Consideration payable is not described as GST inclusive, the Consideration payable or to be provided for that Taxable Supply but for the application of this clause ("GST exclusive consideration") 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. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or valid Adjustment Note) for that Taxable Supply.

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- 6.2 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
- 6.3 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 schedule.
- 6.4 This clause will continue to apply after expiration or termination of this Agreement.

7 Risk and Title

- 7.1 The Contractor must:
- (a) use its best endeavours at all times to faithfully and honestly discharge its duties in the course of providing the Goods and/or Services to Energex;
 - (b) in completing the Services or providing the Goods, comply with the Energex Standard Requirements and 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);
 - (c) provide Energex with such information as may be required by it from time to time;
 - (d) ensure that the warranties set out in this Agreement are and remain true and correct at all times;
 - (e) obtain and maintain at all times necessary regulatory approvals and holds all other licences, qualifications, permits and authorisations necessary for, or incidental to, providing the Goods and/or the Services;
 - (f) provide the Goods and/or 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
 - (g) comply with and ensure that it or its Personnel do not breach, all Laws.

8 Work Health and Safety

8.1 Work health and safety obligations:

- (a) The Contractor must ensure that all Services are carried out in accordance with Work Health and Safety Law.
- (b) Without limiting paragraph (a), the Contractor 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 ('Contractor's Personnel') discharge their respective duties under Work Health and Safety Law, in connection with the performance of the Services.
- (c) The Contractor 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 Contractor must ensure that the Contractor and Contractor'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 Contractor and Contractor'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 Contractor'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 Contractor's health and safety records and compliance with Work Health and Safety Requirements (including the Contractor's Safety Management System) and the Contractor 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 Contractor's Personnel address any issues identified by Energex from its audit and notified to the Contractor.
- (f) The Contractor must immediately notify Energex of:
- (i) any breach or potential breach by the Contractor or any Contractor's Personnel of Work Health and Safety Requirements; or
 - (ii) any notice or direction received by the Contractor or any Contractor'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 8, to give directions to the Contractor, carry out an audit of the Contractor's records or practices, provide, approve or review any plan or other document to be implemented or relied upon by the Contractor (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 Contractor's full responsibility for ensuring strict compliance with all of the Contractor's obligations under the Agreement and under Work Health and Safety Requirements.

- (h) The Contractor must provide to Energex and also to any person who the Contractor 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 Contractor in the discharge of its duties under Work Health and Safety Law; or
 - (ii) received (or which should have been received) by the Contractor or any subcontractor of the Contractor from any other person required to disclose the information to the Contractor or any subcontractor in the discharge of that person's duties under Work Health and Safety Law.

- (i) The Contractor 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 Contractor of its obligations under this clause 8 or any Work Health and Safety Requirements.

9 Insurance

- 9.1 The Contractor must hold all insurances required by the PQS Head Agreement and will promptly provide such evidence as Energex reasonably requires confirming this coverage.

10 Warranties for Goods

- 10.1 Without limiting any conditions or warranties implied by Law, and regardless of whether Energex has accepted the Goods and, the Contractor represents and warrants to Energex that:

- (a) it is the legal and beneficial owner of the Goods and has the right to sell the Goods and provide Energex with free and clear title and quiet possession of the Goods.

- (b) the Goods:
 - (i) match the specification or description (including performance criteria) referred to in the quote or purchase order;
 - (ii) match any sample provided to us;
 - (iii) meet any representations made about performance;

- (iv) comply with any relevant Australia Standards;
- (v) are fit for any purpose we made known to you before purchase;
- (vi) are of merchantable quality, free from defects
- (vii) comply with all relevant Laws.

11 Warranties for Services

11.1 Without limiting any conditions or warranties implied by Law, and regardless of whether Energex has accepted the Services and, the Contractor represents and warrants to Energex that, in relation to the performance of the Services:

- (a) that when performing the Services, it will use parts, materials and other goods which are new and merchantable quality and fit for the intended purpose, and which meet or exceed current industry standards
- (b) that it will use proper and tradesman like workmanship
- (c) that it has informed itself of the nature of the Services and the materials necessary for the performance of the Services
- (d) that it has thoroughly inspected the Site at which the Services are to be performed.

12 Indemnity

12.1 The Contractor indemnifies Energex (and its Personnel) against all claims, costs, expenses, damages, loss or other liability arising from or contributed to by property loss or damage, environmental damage or personal injury or death (including to its employees) arising out of or in connection with the carrying out of the Services or the supply of the Goods, except to the extent directly caused by the negligence of Energex.

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

13 Default and Termination

13.1 In addition to Energex's other rights and remedies, Energex may, by written notice to the Contractor, cancel any Work Order and terminate this Agreement with immediate effect if the Contractor:

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- (a) suffers an Insolvency Event;
 - (b) fails to supply the Goods and/or Services by the nominated Delivery Date;
 - (c) commits a breach of these terms that, in the opinion of Energex, is incapable of being remedied or is not remedied within seven days of Energex giving the Contractor notice requiring it to remedy.
- 13.2 Energex may for convenience and without cause immediately cancel a Work Order and terminate this Agreement (in whole or in part) at any time by written notice to the Contractor.
- 13.3 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 Contractor is responsible for obtaining and maintaining all industrial and intellectual property rights in connection with the Goods (and 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 Contractor 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 Withholding Tax

- 15.1 Whenever the Contractor 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 Contractor 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 Contractor 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 Contractor must provide Energex with evidence to Energex's satisfaction that the Contractor is not a Foreign Resident, failing which Energex shall be entitled to withhold from any payment otherwise due to the Contractor 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 Items

- 16.1 The Contractor must make sure that all information provided by Energex is treated as confidential and is only used in connection with the supply of Goods or Services the subject of the Work Order.
- 16.2 Energex will not have any liability to the Contractor for Consequential Loss.
- 16.3 No amendment to these terms is valid or binding unless made in writing and signed by all parties.
- 16.4 Nothing in this Agreement constitutes any relationship of employer and employee, principal and agent or partnership between Energex and the Contractor.
- 16.5 The Contractor must not assign the benefit of this Agreement or any rights under this Agreement without the consent in writing of Energex.
- 16.6 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.
- 16.7 Energex may set-off or reduce any amount owed to the Contractor against any claim Energex may have against the Contractor on any account.
- 16.8 Time is of the essence in this Agreement.
- 16.9 This Agreement is governed by the laws of Queensland.

17 Definitions and Interpretations

- 17.1 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.

Contractor means the party listed on the Work Order to provide the Goods and/or Services, being a party which has previously entered into the Pre-Qualification Agreement.

Delivery Date means the date set out in the Work Order for the delivery of the Goods or the performance of the Services.

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) delivery requirements; and
- (f) any other standard reasonably required by Energex and advised to the Contractor.

Goods means the items to be supplied by the Contractor as set out in the Work Order (if any)

Insolvency Event means, in relation to the Contractor; an application or order is made to or by a court or a resolution is passed for the winding up of the Contractor or notice of intention to propose such a resolution is given; or a controller (as defined in the Corporations Act 2001 (Cth)) or an administrator under Part 5.3A of the Corporations Act 2001 (Cth) is appointed in respect of the Contractor, or the whole or any part of its undertaking or property.

Instrument of Agreement means an agreement for a particular construction task in the form set out on Energex's Prequalification section of its website.

Laws include any statute, regulation, subordinate legislation or common law (including the principles of equity) of the place in which the Goods are delivered or the Services rendered (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).

Pre-Qualification Agreement means the agreement entered into between the Contractor and Energex to allow the Contractor to be pre-qualified to provide Construction Services in Category 1014

Services mean the services to be provided by the Contractor set out in the Work Order and any related services, functions or responsibilities not specifically described in the Work Order which are reasonably required for the proper performance of the Services.

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

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 8; 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; or
 - (iv) any other provision of the Agreement relating to health and safety.

Work Order means the work order issued in writing by Energex to the Contractor requesting the Goods and/or Services in the form set out in Appendix 1 or otherwise advised by Energex to the Contractor.

17.2 A provision of these terms must be read down to the extent necessary to be valid. If the Contractor comprises more than one person, each of those persons is jointly and severally liable under these terms. No rule of construction applies to the disadvantage of a party because that party put forward this document or any portion of it. References to "includes" or "including" or "for example" means without limitation. The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

Appendix 1

Pro-Forma Work Order