

# Terms and Conditions for the Supply of Goods - Business Energy Services

## 1. Definitions

### 1.1 Definitions

**AGL** means the AGL group company set out in the Quote.

**AGL Background IP** means the Intellectual Property Rights in all information and materials of AGL (belonging to AGL or a third party) which is supplied or otherwise made available by AGL to the Purchaser in the course of performing this Contract and which is either existing prior to the date of this Contract or subsequently brought into existence other than in the course of fulfilling this Contract.

**AGL Contract IP** means Intellectual Property Rights created or developed by or on behalf of AGL or its personnel as part of or in the course of or in connection with the performance of this Contract and includes all Intellectual Property Rights in the Goods, but does not include the AGL Background IP or Purchaser Background IP.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Authority** means any government or a governmental, semi-governmental, administrative, monetary, fiscal or judicial body, entity or authority and any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise, delegated authority or similar entity.

**Business Day** means a week day on which trading banks are open for the transaction of banking business in the State or Territory where the Goods are supplied to AGL under this Contract.

**Carbon Neutral** means "carbon neutral" in accordance with the Climate Active Certification that applies to the Goods.

**Climate Active** means the Australian government's Climate Active initiative.

**Climate Active Certification** means the certification in respect of the Goods in the Climate Active initiative, issued in accordance with the Climate Active Carbon Neutral Standards administered by the Australian government.

**Contract** means the Quote and these terms and conditions.

**Data** means any data or information collected, captured, generated or processed in relation to the Purchaser or in connection with the Goods.

**Defect** means any defect (including a Goods Safety Defect) or failure of a Good.

**Force Majeure** means an event beyond the reasonable control of a party including:

- (a) act of nature;
- (b) war or terrorism;
- (c) national emergency;
- (d) epidemic; and
- (e) act or inaction of government or regulatory agency,

which directly affects that party's ability to perform its obligations arising under this Contract and cannot be mitigated by undertaking reasonable commercial endeavours (provided that the inability to mitigate does not arise due to the relevant party's failure to take reasonable precautions).

**Goods** means the hardware, products, equipment or goods which AGL is to supply to the Purchaser under the Contract and as specified in the Quote, including any Variations.

**Goods Safety Defect** means any characteristic of, or Defect in, the Goods such that:

- (a) AGL or the Purchaser would contravene a Goods Safety Law if one of them supplied or provided the Goods to any person who is a reasonably foreseeable recipient or user of the Goods or goods of the same type or kind as the Goods; or
- (b) the Goods have a safety defect within the meaning of section 9 of the Australian Consumer Law.

**Goods Safety Law** means any law relating to the safety of goods or services including, without limitation, the provisions of Part 3-3 of the Australian Consumer Law.

**GST** means GST imposed by the GST law, applicable from time to time, as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

**Intellectual Property Rights** means all present and future industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi conductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

**Notices** has the meaning given to that term in clause 18.1.

**Personal Information** means Personal Information as that term is defined in the Privacy Act.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth), and terms used in clause 24 (but not elsewhere in this Contract) which are defined in the PPS Act have the meaning given to them in that legislation.

**Price** means the price payable for the supply of the Goods set out in the Quote, as adjusted in accordance with clause 4.

**Privacy Act** means the *Privacy Act 1988* (Cth), as amended from time to time.

**Purchaser** means the party to whom a Quote is addressed.

**Purchaser Background IP** means the Intellectual Property Rights in all information and materials of the Purchaser (belonging to the Purchaser or a third party) which is supplied or otherwise made available by the Purchaser to AGL in the course of performing this Contract and which is either existing prior to the date of this Contract or subsequently brought into existence other than in the course of fulfilling this Contract.

**Purchaser Project IP** means all Intellectual Property Rights created or developed as part of or in the course of performance of this Contract by the Purchaser, but does not include the AGL Background IP, AGL Contract IP or Purchaser Background IP.

**Quote** means a quote, proposal or offer provided by AGL and accepted by the Purchaser in respect of the Goods.

**Reduction Credits** means any benefits or credits of any kind which arise or are created under any regulatory regime or licensing requirements including any rights relating to demand side abatement which arise or are capable of being created as a result of the supply of the Goods.

**Regulatory Requirements** means any Commonwealth, State or Territory or local regulation, including any laws, regulations and regulatory and administrative documents, orders, licence conditions, codes, guidelines or standards (including Climate Active Certification, the Climate Active Carbon Neutral Standard or similar standards or requirements) that are applicable to the supply of the Goods or performance of the Services at the Site from time to time.

**Site** means the location or address to which the Goods are to be delivered as specified in the Quote (or as otherwise agreed by the Purchaser and AGL).

**Variation** means an addition, omission, substitution or change to the scope of, or requirements set out in this Contract for, the Goods. For the avoidance of doubt, a Variation includes the supply by AGL of any materials or replacement parts.

## 2. Interpretation

These terms and conditions form part of any Quote in which they are referred to or to which they are attached.

## 3. Entire Agreement and Order of Precedence

3.1 The Purchaser is taken to have accepted a Quote if it notifies AGL that it accepts the Quote by issuing a purchase order (or other similar document) to AGL or if AGL delivers the Goods.

3.2 This Contract supersedes all other discussions, representations and arrangements relating to the supply of the Goods and constitutes the entire agreement between AGL and the Purchaser with respect to the supply of the Goods.

3.3 No variation, modification or alteration of any of the terms of this Contract will be of any effect unless in writing and executed by each of the parties. Nothing contained in any purchase order or other document unilaterally issued by the Purchaser to AGL will in any way vary, modify, amend or alter the terms and conditions of this Contract.

3.4 In the event of any ambiguity, conflict or inconsistency between the provisions of these terms and conditions and the Quote:

- (a) subject to clauses 3.4(b) and 3.4(c), the provisions of these terms and conditions will prevail and govern to the extent of such ambiguity, conflict or inconsistency; and
- (b) to the extent that the conflict or inconsistency exists between clauses 4.3 or 4.4 of these terms and conditions and the Quote, the Quote will prevail and govern to the extent of such conflict or inconsistency; and
- (c) any provision establishing a higher standard of safety, reliability, durability, performance or service will take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.

3.5 Without limiting clause 3.4, the parties agree that it is a principle of these terms and conditions and the Quote that if there is any ambiguity in respect of the rights or obligations contained in these terms and conditions and the Quote, the rights and obligations in these terms and conditions will be in addition to, and not in substitution for, those contained in the Quote.

## 4. Payment

4.1 If the Quote specifies a validity period, then the Quote will lapse after the expiry of that specified period of time. However, AGL may vary or withdraw a Quote at any time prior to acceptance of the Quote by the Purchaser, in AGL's absolute discretion.

4.2 In consideration of AGL's supply of the Goods to the Purchaser, the Purchaser must pay to AGL the Price and any other charges incurred by

the Purchaser by instalments, in accordance with the payment schedule specified in the Quote.

4.3 Unless otherwise specified in the Quote, AGL may, in its absolute discretion:

- (a) issue an invoice to the Purchaser for the full Price or part of the Price with the balance of the Price (or part thereof) to be invoiced at a later time or times;
- (b) issue invoices to the Purchaser monthly for the Price and any other charges due under the Contract (either in advance or in arrears); and
- (c) if the Quote contains dates for payment, issue invoices to the Purchaser 30 days prior to such dates.

4.4 Unless otherwise specified in the Quote, the Purchaser must, within 30 days after provision by AGL of a tax invoice under this Contract, pay the amount due without deduction or set-off of any kind. The Purchaser must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in clause 4.5. This interest must be paid by the Purchaser to AGL on demand.

4.5 Interest on an unpaid amount accrues each day at a rate equal to the sum of 2 percentage points above the Westpac Banking Corporation corporate overdraft reference rate for that day per annum, and is capitalised (if not paid) every 7 days. This clause does not affect the Purchaser's obligation to pay each amount under the Contract when it is due.

4.6 If AGL proposes to supply a scope of Goods that Varies from the scope specified in a Quote accepted by the Purchaser, AGL must provide the Purchaser with 30 days' written notice of the proposed Variation and any corresponding change to the proposed Price. If the Purchaser accepts the proposed changes, the Quote will be deemed to be revised accordingly from the date of that acceptance. If the Purchaser rejects the proposed changes, or does not respond within the 30 day notice period, then:

- (a) the Quote will no longer apply; and
- (b) if the Purchaser provides satisfactory evidence to AGL of unavoidable costs incurred by the Purchaser as a direct result of AGL's failure to fulfil the original Quote (compared to the costs that would have been incurred had AGL fulfilled the Quote), AGL will reimburse the Purchaser for those costs (subject to the cap in clause 14.3).

4.7 If AGL can demonstrate that any costs associated with the provision of the Goods (whether labour, equipment, regulatory, manufacturing, supplier or contractor charges, supply or other costs) have increased after the date of the Quote but before the supply of the Goods (or part thereof), AGL may provide the Purchaser with 30 days' written notice of a corresponding proposed increase to the Price. If the Purchase accepts the proposed Price change, the Quote will be deemed to be revised accordingly from the date of that acceptance. If the Purchaser rejects the proposed Price change, or does not respond within the 30 day notice period, the Quote will no longer apply.

4.8 If the Purchaser has a bona fide objection to the amount claimed in any tax invoice, it may notify AGL of the objection and it may refer the matter for resolution under clause 25 (Dispute Resolution) and pay the amount of the tax invoice less the amount in dispute. If it is subsequently agreed between the parties or determined under clause 25 (Dispute Resolution) that payment of some or all of the disputed amount should be made by the Purchaser, AGL will include that amount in the next tax invoice it issues to the Purchaser following the agreement or determination and the Purchaser must pay that amount within the timeframe specified in clause 4.4.

## 5. Carbon Neutral Goods

5.1 If the Quote specifies that the Goods the Purchaser purchases from AGL will be certified as Carbon Neutral, then this clause 5 will apply.

- 5.2 Unless otherwise specified in the Quote, the charge for the Goods to be certified Carbon Neutral is included in and forms part of the Price, and the Purchaser cannot opt-out of paying this charge.
- 5.3 If the Quote specifies that the charge for the Goods to be Carbon Neutral is charged separately to the Price, and the Purchaser has opted-in, the Purchaser must pay that separate charge, and the Purchaser cannot opt-out of paying that charge.
- 5.4 AGL holds Climate Active Certification in respect of its provision of the Goods to the Purchaser. The Purchaser may view AGL's Climate Active Certification and Public Disclosure Statements at <https://www.climateactive.org.au/buy-climate-active/certified-brands> as they may be updated from time to time.
- 5.5 AGL's Climate Active Certification for the Goods to be Carbon Neutral does not apply to the use of the Goods, the energy supplied or consumed for the Goods, any energy generated by the Goods, any physical connection of the Goods to the distribution system or any Services.
- 5.6 AGL's Climate Active Certification and provision of the Goods is subject to all Regulatory Requirements from time to time. To the extent permitted by law, AGL will not be liable to the Purchaser or any third parties for any loss or damage arising from or in connection with:
- any changes to AGL's Climate Active Certification or the Carbon Neutral Goods, caused or contributed to, by changes to or new Regulatory Requirements;
  - AGL's Climate Active Certification ceasing or being suspended or terminated for any reason, other than due to negligence by AGL; or
  - any information in connection with AGL's Climate Active Certification or the Goods being Carbon Neutral (including the information provided in Public Disclosure Statements or on the Climate Active website), other than if that information is misleading, inaccurate, incomplete or contains errors due to conduct by AGL.
- This clause 5.6 continues after the termination or expiry of this Contract.
- 5.7 To obtain and maintain AGL's Climate Active Certification, AGL will (amongst other things) acquire and retire eligible carbon offset units from greenhouse gas abatement suppliers which are eligible under the Climate Active Certification program, in its absolute discretion. The Purchaser is not able to direct or otherwise require AGL to allocate funds to any particular abatement projects or suppliers.
- 5.8 AGL may cease providing the Purchaser the Carbon Neutral product under this Contract if AGL's Climate Active Certification ceases, is suspended or is terminated for any reason.
- 5.9 AGL consents to the Customer stating that, through its agreement to purchase the Carbon Neutral Goods from AGL, the Goods that the Customer purchases from AGL is Climate Active Carbon Neutral certified or other statements as approved by AGL from time to time.
- 5.10 The Purchaser undertakes and represents that it will not:
- use the Climate Active Carbon Neutral Certification Trade Mark in connection with this Agreement without the consent of the Federal Department of the Environment and Energy and AGL;
  - issue any announcements or other publicity that misrepresent this agreement or its arrangement with AGL; or
  - do anything or make any representation or omission that is likely to mislead or deceive any person about the characteristics of this agreement or its arrangement or understanding with AGL.
- 6. Risk and Title in the Goods**
- 6.1 Subject to clauses 6.2 to 6.4 (inclusive), risk in the Goods will pass to the Purchaser at the time of delivery of the Goods to the Site.
- 6.2 Notwithstanding clause 6.1, title in the Goods will not pass to the Purchaser until AGL has received payment of the full Price together with any additional amounts payable under clause 4 and any amounts unpaid or owing by the Purchaser to AGL. This is so even if the Purchaser has taken possession of the Goods, or has enhanced or changed the Goods or performed work on them.
- 6.3 Until such time as title in the Goods passes to the Purchaser under clause 6.2, the Purchaser will:
- hold the Goods as fiduciary agent and bailee for AGL; and
  - keep the Goods separate from those of the Purchaser and third parties; and
  - properly store, protect and insure the Goods and maintain the labelling and packaging of AGL so that the Goods are clearly identifiable as AGL's property,
- however, failure to comply with these requirements will not affect AGL's title in and property to the Goods.
- 6.4 Without limiting clause 17.2, if the Purchaser fails to pay the Price in accordance with clause 4, AGL will be entitled at any time to require the Purchaser to return the Goods to AGL. If the Purchaser fails to return the Goods under this clause following a written request by AGL, then AGL may enter upon any premises of the Purchaser where AGL suspects the Goods may be located and remove and repossess the Goods, provided that AGL:
- provides the Purchaser with at least 60 days' notice prior to entering the premises;
  - makes reasonable attempts to obtain the Purchaser's consent prior to entering the premises; and
  - complies with any applicable laws when exercising its rights under this clause 6.4.
- 6.5 AGL and the Purchaser agree that this clause 6 creates relevant, valid and enforceable retention of title by AGL irrespective of any payment arrangement between AGL and the Purchaser.
- 6.6 AGL may set off against any amount due and payable under this Contract by it to the Purchaser, any amount due and payable under this Contract by the Purchaser to AGL.
- 7. Specification**
- 7.1 The Purchaser will be responsible for and bear the cost of any alteration to the Goods supplied by AGL arising from any discrepancy, error or omission in any drawing, specification or other document or information supplied by, or on behalf of, or approved by the Purchaser.
- 7.2 The Purchaser warrants that it has made its own enquiries about the nature of the Goods and the suitability of the Goods for any use or purpose, and has not relied on any representation by AGL in relation to these matters, unless otherwise expressly and specifically stated by AGL in the Quote.
- 8. Goods**
- 8.1 Subject to clause 8.3, AGL must deliver the Goods to the Site in accordance with this Contract.
- 8.2 After risk and title in the Goods passes to the Purchaser in accordance with clause 6, the Purchaser may supply the Goods to third parties, subject to the terms and conditions of this Contract.
- 8.3 The Purchaser must ensure that AGL (and its authorised agents or contractors) has access to the Site (and the Goods once installed at any other premises) as reasonably required to deliver the Goods and to inspect, test, operate, maintain, report on or remove the Goods, or for any other purpose reasonably related to the supply of the Goods.

## 9. Software as a Service

- 9.1 If the Goods supplied to the Purchaser includes the provision of software as a service for use, you acknowledge and agree that the software as a service is managed by the manufacturer or supplier (or any contractor thereof) and not by AGL.

## 10. Product Manual and Training

- 10.1 Information on any product manual, specific training and instructional materials will be as per the third party manufacturer or supplier's website or contained in the Goods packaging., unless otherwise notified to the Purchaser by AGL from time to time.
- 10.2 The parties acknowledge and agree that the product manual, training and instructional materials are the responsibility of the third party manufacturer and third party supplier of the Goods. To the extent permitted by law (and subject to any rights that the Purchaser may have under the Australian Consumer Law), AGL has no liability to the the Purchaser or any third party for any loss or damage arising from, or in connection with, any product manual, training or instructional materials (or lack thereof) in respect of the Goods.

## 11. Warranty

- 11.1 The Purchaser acknowledges that a third party has manufactured and supplied the Goods to AGL.

- 11.2 The Goods are covered by the third party manufacturer's or supplier's standard warranty which are available on the third party manufacturer's or supplier's website or contained in the Goods packaging. AGL will use reasonable endeavours to assign to the Purchaser any third party manufacturer's or supplier's standard warranty. If any such third party warranty is assigned to the Purchaser by AGL, the conditions of the warranty apply strictly as between the third party and the Purchaser.

- 11.3 The Purchaser must immediately notify AGL if the Purchaser:

- (a) is contacted by an Authority in connection with credible allegations or concerns;
- (b) receives a credible complaint from any person other than AGL; or
- (c) otherwise becomes aware or suspects, other than by way of a notification by AGL,

that any of the Goods, or goods supplied by AGL of the same type or kind as the Goods, have or may have any Defect. Without limiting clause 12.1, the Purchaser must comply with any directions AGL, acting reasonably, provides it in response to such notification (for example, directions for safety purposes).

- 11.4 To the extent permitted by law (and subject to any rights that the Purchaser may have under the Australian Consumer Law), AGL excludes all terms, guarantees and warranties not expressed in this Contract and will not be liable for any claims made by the Purchaser other than in accordance with this clause 11 for any Defects or problems identified during or after any warranty period.

- 11.5 Nothing in this Contract (including this clause 11 or clause 14) operates to exclude, restrict or modify the application of any implied condition or consumer guarantee, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law (set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time) or any other statute where to do so would:

- (a) contravene that statute; or
- (b) cause any term of this Contract to be void.

- 11.6 The Purchaser agrees to make all necessary enquiries, examinations and inspections and to take all necessary precautions for the safe collection, and safe and proper subsequent use of the Goods by the Purchaser or any other person, and the Purchaser must ensure that AGL has sufficient and accurate information during manufacturing and the supply of the

Goods to select suitable capacitors, reactors, kVAR/VAR compensators, arrester and protection equipment and any other parts or components (as applicable).

## 12. Assistance with Goods safety incidents

- 12.1 If the Purchaser gives a notice under clause 11.3 or AGL otherwise notifies the Purchaser of a matter described in clause 11.3, the Purchaser must:

- (a) provide AGL or the third party supplier or manufacturer of the Goods with any assistance and information reasonably requested by AGL in connection with the actual or potential Goods Safety Defect, including without limitation assistance or information:

- (i) to promptly investigate the matters raised in the notice to identify the existence, nature and cause of any Goods Safety Defect;
- (ii) concerning the status and outcome of the Purchaser's investigations under clause 12.1(i);
- (iii) to enable AGL to contact any third party supplier, manufacturer or users of the Goods;
- (iv) to enable AGL to recall or decide whether to recall the Goods, or to direct the Purchaser to recall the Goods (including as part of any recall process under Part 3-3 of the Australian Consumer Law);
- (v) if directed by AGL, to recall the Goods in accordance with any reasonable instructions given by AGL (including as part of any recall process under Part 3-3 of the Australian Consumer Law); and
- (vi) to enable AGL to communicate with Authorities, including as part of notifying an Authority or responding to information requests.

- (b) provide AGL with copies of any public statement which the Purchaser proposes to make in relation to the Goods Safety Defect, so as to allow AGL a reasonable opportunity to comment on the statement prior to its publication or release.

## 13. Defects and Goods recall

- 13.1 The Purchaser must provide AGL or the third party supplier or manufacturer of the Goods with any assistance and information reasonably directed by AGL to rectify, recall, replace (including with different Goods) or otherwise deal with as directed (as applicable) any Goods which have a Defect or have been recalled by an Authority, manufacturer, distributor, supplier or similar.

- 13.2 Where AGL provides a written direction to the Purchaser under clause 13.1, the Purchaser must comply with the direction:

- (a) by a reasonable date specified by AGL or, if AGL has not specified a date, within a reasonable time;
- (b) in accordance with all instructions provided by AGL (acting reasonably) in its direction; and
- (c) at times permitted by AGL (acting reasonably) and in a manner which causes as little inconvenience to operations and others on and near the Site as is reasonably possible.

## 14. Liability

- 14.1 The Purchaser releases to the fullest extent permitted by law and indemnifies AGL and its officers, employees, contractors and agents from and against all actions, claims, loss, expense and demands made against AGL and its officers, employees, contractors and agents in connection with any damage to or loss of property, personal injury or death caused by or attributable to any wrongful act or omission of the Purchaser (including any breach of this Contract by the Purchaser), except to the extent that:

- (a) such damage to or loss of property, personal injury or death was caused by AGL or its officers, employees, contractors and agents; or

- (b) AGL failed to take reasonable steps to mitigate the damage or loss.
- 14.2 Notwithstanding anything else expressed or implied in this Contract, to the extent permitted by law, a party will not be liable to the other party or any third party for any:
- loss of production, power, use or business;
  - costs of capital or cost of replacement power;
  - loss of profit or the opportunity to earn profit;
  - loss of data or use of data;
  - loss of good will or damage to reputation; or
  - other special, indirect or consequential loss or damage, however arising, including as a result of negligence on the part of a party or its employees, agents and contractors.
- 14.3 Notwithstanding anything else expressed or implied in this Contract, to the extent permitted by law the parties' maximum aggregate liability to each other arising out of or in connection with this Contract (however arising, including for negligence) is limited to the aggregate of the Price paid or payable under this Contract.
- 14.4 The parties agree that, to the extent permitted by law (including the Australian Consumer Law), AGL will not be liable to the Purchaser or any third party for:
- any failure of the Goods to obtain or meet any performance figures, tolerances or characteristics of the Goods and the third party manufacturer or supplier is responsible for any express or implied warranties regarding such figures, tolerances or characteristics; or
  - any loss or damage arising from, or in connection with, any software as a service or any other software relating to the Goods, any installation services or other services relating to the Goods, including any issues with integration and customisation, Data defects or breaches, service availability, interruptions, or resolution times,
- except to the extent the failure, loss or damage was caused by AGL's negligence (subject to the liability cap in clause 14.3).
- 14.5 If a claim is made by a third party in connection with the Goods that involves AGL or its Related Bodies Corporate, the Purchaser must provide reasonable assistance and co-operation to AGL in connection with the claim.
15. **Commonwealth and State Legislation**
- 15.1 AGL and the Purchaser will comply with the requirements of all applicable Commonwealth and State legislation (including without limitation all relevant environmental and occupational health and safety legislation) and will comply with the requirements of any authority having jurisdiction over or in respect of the Goods.
- 15.2 The Purchaser will give all notices and obtain all approvals, consents and licences required to be given or obtained under such laws, and will pay all fees and bear all costs connected with such notices, approvals, consents and licences.
16. **Force Majeure**
- A party's obligations under this Contract are suspended where an event of Force Majeure prevents or delays their performance.
17. **Termination**
- 17.1 If a party:
- is in material breach of this Contract, which is either not capable of being remedied or is not remedied for 30 days following a written notice by the other party; or
  - has become insolvent or bankrupt or has had an administrator, receiver or liquidator appointed,
- then the other party may immediately terminate this Contract (including any Quote) by giving written notice to the first party.
- 17.2 Where this Contract is terminated by AGL in accordance with this clause 17, the Purchaser must promptly:
- pay AGL the Price in respect of Goods supplied prior to the date of termination;
  - pay AGL any other amounts payable or costs or expenses reasonably incurred by AGL under or in connection with this Contract (subject to clause 14.3); and
  - to the extent the Purchaser has not paid the Price, return the Goods or any part thereof.
- 17.3 Where this Contract is terminated by the Purchaser in accordance with this clause 17, AGL must promptly:
- return any advance payments made by the Purchaser in respect of Goods that have not yet been supplied;
  - return any payments made by the Purchaser in respect of Goods that did not conform with the Quote in any material respect; and
  - pay the Purchaser any other amounts payable or costs or expenses reasonably incurred by the Purchaser as a result of the termination (subject to clause 14.3).
- 17.4 Nothing in this clause 17 nor the exercise by a party of any rights under this clause will in any way limit any right to damages or other remedies a party may have with respect to this Contract.
- 17.1 Clauses 1, 6, 8.2, 10.2, 11.3, 12.1, 14, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27 and 28 and any other obligations which are expressed to, or by their nature, survive expiry or termination of this Contract, survive expiry or termination of this Contract.
18. **Notices**
- 18.1 A notice demand, consent, request or other communication (a **Notice**) given or made under this Contract:
- must be in writing and signed by a person duly authorised by the sender; and
  - must be delivered to the intended recipient by hand or by prepaid post (if posted to an address in another country, by registered airmail) or email to the email address set out in the Quote, or address last notified by the intended recipient to the sender.
- 18.2 A Notice will be taken to be duly given or made:
- in the case of delivery in person, when delivered;
  - in the case of delivery by post, seven Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
  - in the case of delivery by email, on the first to occur of:
    - receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
    - the time that the Notice enters an information system which is under the control of the recipient; and
    - the time that the Notice is first opened or read by the recipient,
 but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.
19. **GST**
- 19.1 All amounts payable or the value of other consideration provided in respect of supplies made in relation to this Contract are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Contract, the amounts

- payable or the value of the consideration provided for that supply (or deemed supply) must be increased by the amount of GST payable in relation to the supply.
- 19.2 Where any amount is payable to a party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then such amount will be reduced by the amount of any input tax credit available to that party and, if a taxable supply, will be increased by the GST payable in relation to that supply.
- 19.3 All GST payable will be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it will be payable within 10 days of a tax invoice being issued by the party making the supply.
- 19.4 Where in relation to this Contract a party makes a taxable supply, that party will provide a tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.
- 20. Confidentiality**
- 20.1 The parties acknowledge that the information contained in this Contract and all data and information acquired or received by a party during or in connection with the negotiation or performance of this Contract is confidential and must not be disclosed to any third party without the prior written consent of the other party.
- 20.2 Clause 20.1 does not apply to confidential information required to be disclosed by law or pursuant to stock exchange listing rules or disclosed to legal advisers, auditors, agents or employees of each party or its related bodies corporate in connection with this Contract.
- 21. Privacy**
- 21.1 The Purchaser authorises AGL to collect, use, disclose and store the Purchaser's Personal Information for the purpose of providing the Purchaser with the Goods.
- 21.2 AGL's Privacy Policy, which is available at [www.agl.com.au/privacy-policy](http://www.agl.com.au/privacy-policy), provides the Purchaser with information on how AGL collects, uses, discloses and stores the Purchaser's Personal Information and on how the Purchaser can access or correct Personal Information AGL holds about the Purchaser, how to make a privacy-related complaint, and how AGL will deal with such a complaint.
- 21.3 AGL may exchange Data, including Personal Information, with third party providers, which include the manufacturers or suppliers of any Goods, for the purpose of providing the Purchaser with the Goods or for a purpose set out in AGL's Privacy Policy.
- 21.4 Subject to this clause 21 and the Privacy Act, AGL's third party providers may collect, store, use and disclose Data, including Personal Information, about the Purchaser:
- as described in their privacy policies or statements provided to the Purchaser;
  - to provide Goods to the Purchaser and to AGL;
  - to communicate product information for safety, maintenance and product improvement purposes to the Purchaser; and
  - to maintain, improve and enhance their Goods.
- 21.5 Each party will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by any other party to give effect to this clause 21.
- 22. Intellectual Property**
- 22.1 The Purchaser acknowledges that AGL retains ownership of all AGL Background IP.
- 22.2 AGL acknowledges that the Purchaser retains ownership of all Purchaser Background IP.
- 22.3 All AGL Contract IP will be owned absolutely by AGL and vests in AGL immediately on creation.
- 22.4 All Purchaser Project IP will be owned absolutely by the Purchaser and vests in the Purchaser immediately on creation
- 22.5 The Purchaser grants AGL a perpetual, irrevocable, worldwide, non-exclusive, transferable, sub-licensable, royalty free licence to use, reproduce, adapt, distribute on-sell and communicate under the Purchaser Background IP and the Purchaser Project IP for any purpose reasonably required by AGL (including an internal business purpose of AGL or its Related Body Corporate), or to do any thing necessary and convenient in order for AGL to perform or exercise its rights under this Contract.
- 22.6 AGL grants the Purchaser a revocable, non-exclusive, non-transferable, non-sub-licensable, royalty-free licence to use AGL Background IP and AGL Contract IP solely to the extent necessary to enable the Purchaser to use the Goods, perform or exercise its rights under this Contract or to otherwise enjoy the benefit of this Contract (and for no other purpose or project).
- 22.7 AGL will have no liability whatsoever in the event of any claim of infringement of any Intellectual Property Rights howsoever arising in respect of the Goods.
- 22.8 Any information (including design, software or drawings) supplied by AGL or any of its employees, agents or contractors to the Purchaser will be treated as confidential information and will not be disclose to any other person unless AGL consents in writing to such disclosure.
- 23. Insurance**
- 23.1 If requested by AGL, the Purchaser must provide reasonable assistance to AGL to enable AGL to make a claim under any relevant AGL insurance policy.
- 24. Personal Property Securities Law**
- 24.1 The Purchaser acknowledges that clause 6 creates a security interest in the Goods in favour of AGL.
- 24.2 This Contract constitutes a security agreement for the purposes of the PPS Act.
- 24.3 The Purchaser must do anything reasonably required by AGL to enable AGL to register its security interest, with the best priority available to AGL, and to maintain the registration.
- 24.4 The security interests granted to AGL under this Contract attach to the Goods not later than the time the Purchaser obtains possession of the Goods.
- 24.5 The parties confirm that they have not agreed that any security interest created in favour of AGL under this Contract attaches at any later time.
- 24.6 The Purchaser acknowledges that AGL may perfect its security interests by lodging one or more financing statements on the Personal Property Securities Register established under the PPS Act.
- 24.7 All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the security interests created by this Contract, except as excluded by clause 24.8.
- 24.8 To the extent the law permits:
- for the purposes of sections 115(1) and 115(7) of the PPS Act:
    - AGL need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPS Act; and
    - sections 142 and 143 are excluded;
  - for the purposes of section 115(7) of the PPS Act, AGL need not comply with sections 132 and 137(3) of the PPS Act;
- 24.9 AGL does not need to give the Purchaser any notice under the PPS Act (including a notice of a Verification Statement, as defined in the PPS Act) unless the notice is required by the PPS Act and that requirement cannot be excluded.

24.10 Each party must not disclose to an “interested person” (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act except as required by law. The Purchaser must not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

24.11 This clause does not limit what other amounts are secured under this Contract.

## 25. **Dispute Resolution**

25.1 In the event of any dispute between the parties under or in connection with this Contract, except where a party seeks urgent interlocutory relief, the parties will:

- (a) within seven days (or such other period agreed between the parties) of a party providing notice of a dispute to the other party, ensure that a senior representative of each party meet with a view to resolving the dispute; then
- (b) if the dispute is not resolved, within seven days (or such other period agreed between the parties) of that meeting, senior representatives of the parties will meet with a view to resolving the dispute; then
- (c) if the dispute remains unresolved within 21 days (or such other period agreed between the parties) of provision of the notice of dispute or within seven days (or such other period agreed between the parties) of the date of the last meeting under clause 25.1(b), whichever is the earlier, then the parties will refer the dispute to mediation to be conducted by the Australian Disputes Centre in accordance with its then current mediation rules and guidelines for resolution within 10 days (or such other period agreed between the parties); then
- (d) if the dispute remains unresolved at the expiry of the 10 day mediation period referred to in clause 25.1(c) (or such other period agreed between the parties), either party may apply to a court of competent jurisdiction to seek urgent relief or initiate any legal process.

25.2 If a dispute is referred to mediation or arbitration:

- (a) any meetings organised will be held at AGL’s offices or such other place as may be agreed by the parties;
- (b) the parties agree to pay costs as directed by the mediator or arbitrator, as applicable; and
- (c) both parties may be represented by a duly qualified legal practitioner.

25.3 Despite the existence of a dispute, each party must continue to perform its obligations under this Contract.

## 26. **Waiver**

The failure of any party to enforce any provision of this Contract or exercise any rights expressed in this Contract, will not be a waiver of such provisions or rights and will not affect the enforcement of this Contract, unless the waiver is in writing and signed by the party granting the waiver.

## 27. **No Assignment**

The Purchaser must not assign its rights or obligations under this Contract unless the Purchaser has provided AGL with at least 30 days’ written notice and AGL has not objected (acting reasonably) to the assignment.

## 28. **Governing Law**

This Contract will be governed by and construed in accordance with the laws of the State of New South Wales, Australia, unless otherwise specified in the Quote. Each party to this Contract submits to the non-exclusive jurisdiction of the courts of that State or Territory.

