

1 Dictionary

1.1 Words used in these Terms and Conditions have the following meaning:

Australian Consumer Law means the Competition and Consumer Act 2010 (Cth) as amended from time to time.

Australian Privacy Principles means the Australian Privacy Principles which are contained under schedule 1 of the Privacy Act.

Background IP means with respect to both parties Intellectual Property owned by that party existing at the date of the Systems Agreement including any modifications made during the term of the Systems Agreement.

Claims means claims, demands, costs, losses, expenses, liabilities and damages of any kind.

Collateral has the meaning given in the PPSA.

Commencement Date means the date so specified in the Systems Agreement.

Completion Date means the date so specified in the Systems Agreement.

Confidential Information means any information of a confidential nature which relates to the business, affairs or activities of a party including information comprised in Intellectual Property Rights of any party, process or operational information, calculations or analysis, financial and business information and information of third parties which is required to be kept confidential.

Contract means the contract between the Contractor and You consisting of these Terms and Conditions and the Systems Agreement.

Contract Material means all material, including all Intellectual Property Rights, created in the performance of this Contract, but excludes the Contractor Material.

Contractor means the supplier identified in the Systems Agreement.

Contractor Material means the Intellectual Property Rights of the Contractor which are in existence at the Commencement Date or come into existence after the Commencement Date.

Corporations Act means the Corporations Act 2001 (Cth).

Cyber Threat means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Your computer systems or electronic infrastructure or that may result in any unauthorised access, acquisition, loss, misuses, destruction, disclosure and/or modification of Your computer systems, including any data, and whether through malware, hacking or similar attacks.

Defect means any defect, fault or omission in the Products or Services which is not in accordance with the requirements of this Contract.

Defects Liability Period means, in respect of:

- (a) a Product (other than software), 6 months from when that Product was delivered to the Delivery Point;
- (b) software (including software embedded in Products), 3 months from when that software was first supplied under this Contract; and
- (c) a Service, 3 months from the date when that Service was first supplied under this Contract.

Delivery Point means the place so specified in the Systems Agreement.

Energy Consumption Services means Services to support customers in managing financial risks purchasing energy and energy consumption and/or generation.

Event of Default means, in respect of a party, any of the following:

- (a) the party becomes Insolvent;
- (b) the party commits a material breach of its obligations under this Contract that is capable of being remedied and does not remedy the breach within a reasonable time after receiving notice in writing from the other party specifying the breach and requiring the breach to be remedied; or
- (c) the party commits a material breach of its obligations under this Contract that is not capable of being remedied and does not take reasonable steps to prevent reoccurrence of such breach,

and includes a failure by You to provide the Security when required under this Contract.

Fee means the amounts payable by You for the supply of the Products and Services as calculated in accordance with the Systems Agreement plus an additional amount equal to any costs and expenses incurred by the Contractor in connection with any change in Law whether occurring before or after the Commencement Date.

Force Majeure Event means any circumstances which are beyond the reasonable control of an affected party as a direct or indirect result of which a party is prevented from, or delayed in, performing any of its obligations under this Contract.

GST means the same as in the GST Law.

GST Law has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvent means, in respect of a party, that it:

- (a) is (or states that it is) insolvent (as defined in the Corporations Act);
- (b) has a Controller (as defined in the Corporations Act) appointed to any part of its property;
- (c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;
- (d) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or, dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party to this Contract);
- (e) is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) is the subject of an event described in section 459(C)(2) or section 585 of the Corporations Act (or it makes a statement from which the other party to this Contract reasonably deduces it is so subject); or
- (g) is otherwise unable to pay its debts when they fall due.

Intellectual Property Rights means all and any rights in issued patents and patent applications, rights to inventions, design rights, utility models, copyright and related rights, trademarks, trade, business and domain names, moral rights, rights in confidential information (including know-how and trade secrets).

Law means:

- (a) other Commonwealth, State or local legislation including regulations, by-laws and other subordinate legislation and including all environmental laws;
- (b) common law; and
- (c) guidelines of a Commonwealth, State or local government with which a party to this Contract is required to comply.

Personal Information means all information about a person that is "personal information" as defined in the Privacy Act, which is collected and/or handled by any of the parties in connection with this Agreement.

Personnel includes employees, agents and contractors.

PPSA means the Personal Property Securities Act 2009 (Cth).

Privacy Act means the Privacy Act 1988 (Cth) as amended from time to time. **Privacy Policy** means (POL306.01) the guiding principles of this policy aims to protect personal information records for confidentiality and privacy.

Products means the products (including Software or hardware) prescribed in the Systems Agreement or otherwise supplied by the Contractor to You under this Contract.

Qualifying Delay means Your breach of this Contract (including Your failure to pay the Contractor's invoice when due), Your failure to procure that the Third Party Works are completed by the relevant date specified in the Systems Agreement, the Contractor being unable to safely access the Delivery Point or Site for any reason, delays caused by separate contractors, any delay caused by the Contractor's subcontractor or supplier, any Defect which a third party (including any subcontractor or supplier of the Contractor) has caused or contributed to, shipping delays, any change in Law affecting the Contractor, an Event of Force Majeure, a delay by You in responding to a request for documentation or information by the Contractor, any variation to this Contract agreed by the parties and any delay caused or contributed to by You.

Security means the security specified in the Systems Agreement to be provided by You for the benefit of the Contractor, as a surety of Your performance of obligations pursuant to the Contract.

Security Interest means a security interest that is subject to the PPSA.

Services means the services set out in the Systems Agreement or otherwise provided under this Contract by the Contractor to You.

Site means the place so specified in the Systems Agreement.

Software means machine readable computer programs that comprise a series of instructions, rules, routines, algorithms or statements, regardless of the media in which recorded, that allow or cause a computer, or other machine, to perform a specific operation or series of operations.

Systems Agreement means the document of that name signed by You and the Contractor, or deemed to have been entered into by You and the Contractor, in relation to the supply of the Products and provision of the Services by the Contractor to You in consideration of the Fee.

Taxes includes any tax, stamp, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with

any penalties, fines or interest or similar additions, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the performance of this Contract but does not include GST payable under clause 6.4.

Terms and Conditions means these terms and conditions.

Third Party Works has the meaning given in the Systems Agreement.

You, Your or Yourself means the purchaser identified in the Systems Agreement.

1.2 Rules for interpreting this Contract

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Contract, except where the context makes it clear that a rule is not intended to apply.
 - (b) A reference to:
 - (1) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (2) a document (including this Contract) or agreement, or a provision of a document (including this Contract) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (3) a party to this Contract or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (4) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in Law of the person; and
 - (5) anything (including a right, obligation or concept) includes each part of it.
 - (c) A singular word includes the plural, and vice versa.
 - (d) A word which suggests one gender includes the other genders. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The words related body corporate have the same meaning as in the Corporations Act.
 - (g) A reference to dollars or \$ is to an amount in Australian currency unless expressly stated otherwise in this Contract.
- 1.3 If there is any discrepancy, inconsistency or ambiguity within or between the documents (or parts of the documents) comprising this Contract, the Contractor must resolve the discrepancy, inconsistency or ambiguity by applying the following order of precedence:
- (a) any Systems Agreement; and
 - (b) these Terms and Conditions.

1.4 This Contract applies to the exclusion of any terms and conditions contained in any purchase order or other document created or issued by You. This Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Contract and has no further effect.

1.5 You acknowledge that You have no authority to bind the Contractor and that You must not hold Yourself out as an agent of the Contractor in dealings with third parties or purport to incur any obligation, or make any promise, contract or undertaking, warranty or representation for or on behalf of the Contractor. Nothing in this Contract is to be treated as creating a relationship of employer and employee, agency arrangement, partnership, joint venture or fiduciary relationship between You and the Contractor.

1.6 This Contract commences on the Commencement Date.

2 Supply of Products and Services

- (a) The Contractor agrees to provide the Products and Services to You and You agree to pay the Fee for the Products and Services to the Contractor on the terms of this Contract.
- (b) You must procure that the Third Party Works are completed by the relevant date specified in the Systems Agreement.

3 Ownership and risk

Risk in the Products and Services passes to You from the Contractor when the Products and Services are delivered to the Delivery Point. Title in the

Products passes to You when You make payment in full in accordance with clause 5.

4 Confidential Information and intellectual property

- 4.1 If You have access to any of the Contractor's Confidential Information You must:
 - (a) keep the Confidential Information confidential;
 - (b) only disclose the Confidential Information to Your Personnel who genuinely need to know the Confidential Information in order for You to perform Your obligations and exercise your express rights under this Contract and only if such persons are required to keep the Confidential Information confidential; and
 - (c) only use the Confidential Information for the purpose for which it was provided.

5 Time and Progress

- 5.1 The Contractor must use its reasonable endeavours to complete the supply of the Products and the Services by the Completion Date.
- 5.2 The Contractor is automatically entitled to an extension of time under this Contract to achieve the Completion Date to the extent that it is delayed by a Qualifying Cause of Delay. If You cause the Contractor to be delayed in performing its obligations under this Contract, then You must pay the Contractor its costs and expenses incurred as a result of that delay.

6 Payment

- 6.1 The Contractor will send You its tax invoice to the address for invoices shown on the Systems Agreement. The tax invoice must be calculated in accordance with the Fee.
- 6.2 You must pay the Contractor's tax invoice within 7 days of receipt. Late payments attract interest at the rate set out in clause 67P(3)(a) of the Queensland Building Services Authority Act 1991 (Qld) from the due date until and including the date that the payment is made.
- 6.3 The Contractor will provide You with written details of a bank account to enable You to make payments under this Contract to that account by electronic funds transfer. Payment will be deemed not to have been made until received into that account in cleared funds. Payment by You constitutes an acknowledgment by You that the Products and Services are in conformity with the requirements of this Contract.
- 6.4 Unless otherwise specified, amounts otherwise payable under this Contract are exclusive of GST. You must pay to the Contractor the amount of GST for which the Contractor becomes liable for any supply that the Contractor makes to You under this Contract.

7 Security

You must provide the Contractor with the Security at the times specified in the Systems Agreement. In the event you are in default pursuant to the Contract you irrevocably authorise the Contractor to apply the Security to any amount owed by You to the Contractor.

8 Intellectual Property

- 8.1 Each party will retain all Intellectual Property Rights in their respective Background IP.
- 8.2 Subject to payment in full, the Contractor grants You a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free licence to use the Contract Material and the Contractor Material to the extent necessary for You to use the Products at the Site for the purposes for which the Products were supplied under this Contract.
- 8.3 Any improvement, discovery or invention made by the Contractor in its provision of the Services or Products (including Background IP or Software) is the property of (and all Intellectual Property Rights vest in) the Contractor.

9 Insurance

You must effect and maintain:

- (a) insurance for all commercially insurable risks for the full value of the Products until the Contractor is paid in full for those Products; and
- (b) public liability insurance with a total aggregate cover of not less than \$20,000,000.

10 Products and Services

- 10.1 Subject to clause 10.4, the Contractor warrants that the Products and the Services will comply with the requirements expressly set out in the Systems Agreement for the duration of the Defects Liability Period but

	makes no other warranty, express, statutory or implied, including those of description, merchantability and fitness for a particular purpose, and all such warranties are expressly disclaimed and excluded. To the extent permitted by Law, the terms of the Sale of Goods Act 1896 (Qld) and any similar legislation are excluded from this Contract.	14	Governing law This Contract is governed by Queensland law.
10.2	Subject to clause 10.4, if the Contractor supplies any Products or Services that are Defective, as Your sole remedy, the Contractor may (at the Contractor's option) either rectify the defect or resupply the Products or Services to You. If the Contractor resupplies any Products, You must return any Defective Products.	15	Termination
10.3	The Contractor will use its reasonable endeavours to assign to You any third party software licences and warranties relating to any Products or software created by third parties and supplied to You under this Contract (but only to the extent such licences or warranties are capable of assignment).	15.1	Either party may terminate this Contract by 14 days' notice in writing to the other party if the other party commits an Event of Default.
10.4	You are not entitled to any Claim whatsoever against the Contractor in connection with this Contract for any Defect:	15.2	The Contractor may for any reason terminate this Contract on 14 days' notice in writing to You, in which case this Contract will be deemed to expire on the date such notice takes effect and the parties' respective rights and obligations will be construed accordingly, including that the Contractor will have no liability or obligation in connection with the supply of anything scheduled to be provided following the date such notice takes effect.
(a)	to the extent caused by You, including Your failure to comply with the manufacturer's instructions or manual;	15.3	In the event this Contract is terminated then, unless otherwise agreed between the parties in writing, you must:
(b)	which results from improper installation, misuse, fire, flood, external impact, operator error, maladjustment, modification or lack of routine maintenance except to the extent caused by the Contractor;	(a)	deliver up any Products to which You do not have title; and
(c)	which results from fair wear and tear;	(b)	cease using and delete any Software in Your possession; and
(d)	which a third party (including any subcontractor or supplier of the Contractor) has caused or contributed to; or	(c)	demonstrate compliance clause 15.3(b) above.
(e)	is a result of a Force Majeure Event.	16	Liability
10.5	If the Contractor provides Software as part of the Products then the Contractor gives You a non-exclusive, non-transferable licence to use the Software as reasonably necessary and prescribed by the Contractor. You must not:	16.1	Notwithstanding any other provision of this Contract:
(a)	disclose the Software to any third party; or	(a)	to the extent permitted by Law, the Contractor's aggregate liability in connection with this Contract howsoever arising is limited to the resupply of any Products or Services; and
(b)	decompile, disassemble, reverse assemble, reverse engineer, translate or emulate the Software.	(b)	the Contractor will not be liable to You for any loss of use, production, profit, revenue, business, contracts or goodwill resulting from a breach of this Contract, or for any punitive, exemplary, special or consequential damages.
11	Taxes Unless otherwise expressly provided in this Contract, You must pay all Taxes arising out of or relating to this Contract or the performance of Your obligations under this Contract.	16.2	You must indemnify the Contractor and its Personnel against, and must pay the Contractor and its Personnel on demand, the amount of any claims, damages, expenses (including legal costs on a full indemnity basis), losses or liabilities which the Contractor or its Personnel suffer or incur, in respect of:
12	Notices	(a)	loss of, or damage to, or loss of use of, any real or personal property, or the personal injury, disease or illness (including mental illness) to, or death of, any person, arising in connection with this Contract;
12.1	A notice given to the Contractor under this Contract must be in writing signed by an authorised representative of You and addressed to the Contractor's address or email address set out in the Systems Agreement, or as otherwise notified by the Contractor to You. You must not give a notice regarding an Event of Default by email.	(b)	a breach by You of this Contract; and
12.2	A notice to You given under this Contract must be in writing and signed by an authorised representative of the Contractor and addressed to Your address or email address shown in the Systems Agreement, or as otherwise notified by You to the Contractor.	(c)	the unlawful or negligent act or omission or the wilful misconduct by You or Your Personnel,
12.3	A Notice or other document sent in accordance with clause 12.1 or 12.2 is deemed to have been given and received:		except to the extent that any such claims, damages, expenses, losses or liabilities are caused by the Contractor or its Personnel.
(a)	if sent by post, on the earlier of actual receipt and 3 days after posting;	17	Preservation of rights and obligations on termination
(b)	if sent by email, at the time of sending if the sender does not subsequently receive an error message,	17.1	The provisions relating to Confidential Information, indemnity, governing law and jurisdiction, and Intellectual Property Rights survive termination or expiry of this Contract until each obligation under those provisions have been completely discharged.
	but if sent by email after 5pm Brisbane time or on a day that is a Saturday, Sunday or public holiday in Brisbane, Australia the notice will be deemed to have been given and received on the next day that is not a Saturday, Sunday or public holiday in Brisbane, Australia.	18	PPSA
13	No assignment	(a)	You acknowledge that that this Contract gives rise, or may give rise, to one or more Security Interests in favour of the Contractor and that the Contractor may register a financing statement in relation to its Security Interests.
13.1	You may not transfer, assign, encumber, declare a trust over or otherwise deal with a right or interest under this Contract without the prior written consent of the Contractor. You must not undergo a change in control without the prior written consent of the Contractor. For the purposes of this clause, control has the meaning given to that term in the Corporations Act.	(b)	Each party agrees not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. You agree that You will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Contractor approves. Nothing in this clause will prevent any disclosure by the Contractor that it believes is necessary to comply with its other obligations under the PPSA.
13.2	The Contractor may transfer, assign, declare a trust over or otherwise deal with its rights under this Contract without Your consent and You must do, and must ensure that Your Personnel do anything (including execute any document), that the Contractor may reasonably require to give full effect to this clause.	(c)	To the extent that it is not inconsistent with clause 18(b) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, each party agrees that the other party may disclose information of the kind mentioned in section 275(1) of the PPSA so long as the disclosure is not in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
		(d)	If You default in the timely performance of Your obligations under this Contract, the Contractor may, without prejudice to any other enforcement right, enter immediately onto Your premises at any time and take possession of any Collateral. The Contractor may, in its absolute

discretion, retain or sell any Collateral it repossesses. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Contractor of any of its Security Interests in the Collateral, You and the Contractor agree that the following provisions of the PPSA do not apply:

- (1) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (2) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- (e) Each party must do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the other party reasonably requests for the purposes of:
 - (1) ensuring that the other party's Security Interest is enforceable, perfected and otherwise effective;
 - (2) enabling the other party to apply for any registration, or give any notification, in connection with the other party's Security Interest so that the Security Interest has the priority required by the other party; and
 - (3) enabling the other party to exercise rights in connection with the other party's Security Interest.

19 Customer's Cybersecurity Obligations

- 19.1 You must maintain appropriate cybersecurity for your computer systems sufficient to prevent a Cyber Threat.
- 19.2 You must update and upgrade your cybersecurity, including any appropriate software updates or patches to fix known vulnerabilities, in accordance with competent cybersecurity standards and software recommendations.
- 19.3 You must immediately notify us of any damage resulting from a realised Cyber Threat that affects the Products, Services or Software and take all action reasonably possible to minimise any damage arising from the realised Cyber Threat.

20 Privacy Policy

- 20.1 Each party agrees to comply with its respective obligation under the Privacy Act in respect of Personal Information obtained by or disclosed to it pursuant to this Contract.
- 20.2 Each party must only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this Contract unless otherwise permitted under this Contract or the Australian Privacy Principles.
- 20.3 A party must notify the other party as soon as possible when it becomes aware of:
 - (a) a complaint alleging an interference with privacy;
 - (b) any breach, or possible breach of this clause 20; or
 - (c) in relation to any Personal Information collected and/or handled by any of the parties in connection with this Contract.