



## Snowy Hydro Limited Purchase Order General Conditions

*January 2019*

### **1 APPLICATION**

- 1.1 By accepting this Purchase Order, the Supplier agrees to be bound by these Purchase Order General Conditions, unless different terms and conditions have been agreed by Snowy Hydro in writing and a reference to the relevant contract number of those terms and conditions is noted on the front page of this Purchase Order.
- 1.2 For clarity, if a contract number is noted on the Purchase Order, the terms and conditions of that contract will apply and the remainder of these Purchase Order General Terms will not apply to the Purchase Order.
- 1.3 If the Supplier is unable to comply with this Purchase Order, the Supplier must:
  - (a) immediately contact Snowy Hydro; and
  - (b) not take any step in fulfilment of this Purchase Order until the Supplier receives further written instructions from Snowy Hydro.
- 1.4 If this Purchase Order is for the supply of Goods, **clauses 2 and 6 to 11** apply.
- 1.5 If this Purchase Order is for the provision of Services, **clauses 3 and 6 to 11** apply.
- 1.6 If this Purchase Order is for Minor Works, **clauses 4 and 6 to 11** apply.
- 1.7 If a Purchase Order is for a combination of any of the supply of Goods, Services and Minor Works, then the relevant clauses for each category of supply nominated in this clause apply.
- 1.8 If a Purchase Order is for Periodic Orders, **clause 5** applies in addition to the other relevant clauses for the category of supply.

### **2 PURCHASE ORDER FOR GOODS**

#### **2.1 Supply of the Goods**

- 2.1.1 If this Purchase Order is for the supply of Goods, the Supplier must supply the Goods to Snowy Hydro in accordance with this Purchase Order.
- 2.1.2 If this Purchase Order specifies that the Supplier is responsible and liable for the delivery of the Goods to Snowy Hydro, the Supplier must:
  - (a) deliver the Goods to the delivery address by the delivery date and time as specified in the Purchase Order; and
  - (b) bear all costs associated with the delivery of the Goods to Snowy Hydro including (without limitation) the cost of insuring the goods for transport and delivery.
- 2.1.3 **Subject to clause 2.1.4**, if the Purchase Order specifies a freight carrier in the 'Freight' field, Snowy Hydro agrees to pay directly for the freight charges in relation to goods and clause 2.1.2 will not apply.
- 2.1.4 Unless otherwise agreed in writing with Snowy Hydro, Snowy Hydro will not pay delivery or freight charges for partial delivery of the Goods.

#### **2.2 General obligations of the Supplier – supply of Goods**

- 2.2.1 The Supplier must:
  - (a) ensure that the Goods are suitably labelled, packed and prepared for delivery;
  - (b) not charge Snowy Hydro for any wrapping, packing, cartons or crating unless first agreed in writing by Snowy Hydro;
  - (c) ensure, and represents and warrants to Snowy Hydro, that the Goods:
    - i) comply with all applicable laws and with any specifications or requirements as advised by Snowy Hydro;

- ii) are new, fit for the purpose for which goods of the same kind are commonly supplied and fit for any other purpose made known to the Supplier by Snowy Hydro;
  - iii) are of merchantable quality and free from defects in material and workmanship; and
  - iv) include any applicable manufacturer's warranty; and
- (d) ensure that all tax invoices, delivery dockets and correspondence clearly show the relevant Purchase Order number.

**2.2.2** The Supplier represents and warrants that the sale or use of the Goods does not infringe upon any patent, trade mark, copyright or other Intellectual Property of any third party.

### **2.3 Inspection, testing and acceptance of the Goods**

**2.3.1** Snowy Hydro must inspect and test the Goods within 21 calendar days of the delivery to or collection of the Goods by Snowy Hydro.

**2.3.2** If, as a result of inspecting the Goods under **clause 2.3.1**, Snowy Hydro reasonably determines that some or all of the Goods do not meet the requirements of this Purchase Order ("**Defective Goods**"), then Snowy Hydro will promptly notify the Supplier in writing of the Defective Goods and hold the Defective Goods for the Supplier's instructions and at the Supplier's risk for a period not exceeding 21 calendar days.

**2.3.3** If the Supplier's instructions are not received within 21 calendar days, Snowy Hydro may return the Defective Goods to the Supplier's premises at the Supplier's expense.

**2.3.4** Snowy Hydro will not be liable to the Supplier for the payment for any Defective Goods.

**2.3.5** If Snowy Hydro does not notify the Supplier of any defects in the Goods in accordance with **clause 2.3.2** within 28 calendar days of the delivery to or collection of the Goods by Snowy Hydro, Snowy Hydro is deemed to have accepted the Goods.

**2.3.6** Signed delivery dockets do not constitute acceptance of the Goods by Snowy Hydro. Signed delivery dockets only constitute acknowledgement of the number of packages or cartons delivered to, or received by, Snowy Hydro.

### **2.4 Title and risk**

**2.4.1** Title in the Goods passes from the Supplier to Snowy Hydro upon delivery of the Goods to Snowy Hydro or collection of the Goods by Snowy Hydro, as the case may be.

**2.4.2** Risk in the Goods passes from the Supplier to Snowy Hydro upon acceptance of the Goods by Snowy Hydro under **clause 2.3.5**.

## **3 PURCHASE ORDER FOR SERVICES**

### **3.1 Supply of Services**

**3.1.1** If this Purchase Order is for the supply of Services, the Supplier must supply the Services to Snowy Hydro in accordance with this Purchase Order.

**3.1.2** If supplying the Services requires the Supplier to attend a Snowy Hydro site, the Supplier must comply with all Snowy Hydro's policies, procedures and directions while on site, including Snowy Hydro's Life Saving Rules which can be found at: [INSERT WEB ADDRESS].

### **3.2 General obligations of the Supplier – provision of Services**

**3.2.1** The Supplier must provide the Services:

- (a) in compliance with all applicable laws and in a proper and professional manner in accordance with generally accepted industry standards, practices and codes of conduct; and
- (b) without doing anything that may directly or indirectly impair (or be likely to impair) the good name and reputation of Snowy Hydro or its business.

**3.2.2** In providing the Services, the Supplier represents and warrants to Snowy Hydro that:

- (a) the provision of the Services does not infringe upon any Intellectual Property of any third party;
- (b) in entering into and performing its obligations under this Purchase Order it has not, and will not, be in breach of any law or any obligation owed to a third party;
- (c) the Supplier and all of its employees and subcontractors hold all such licences, permits, registrations and certifications as required by law; and
- (d) it has the necessary skills, experience, qualifications, resources, technology and know-how to provide the Services.

### **3.3 Defective Services**

- 3.3.1** If Snowy Hydro reasonably forms the view that the Services do not comply with the requirements in this Purchase Order, whether in whole or in part ("**Defective Services**"), Snowy Hydro may within 21 calendar days of receipt of the relevant Defective Services issue a notice to the Supplier in writing.
- 3.3.2** If Snowy Hydro issues a notice under **clause 3.3.1**, the Supplier must at its own cost comply with the requirements of that notice.
- 3.3.3** Snowy Hydro will not be liable to the Supplier for the payment for any Defective Services until they have been rectified in accordance with **clause 3.3.2**.

## **4 PURCHASE ORDER FOR MINOR WORKS**

### **4.1 Undertaking Minor Works**

- 4.1.1** If this Purchase Order is for the undertaking of Minor Works, the Supplier:
- (a)** must undertake the Minor Works in accordance with this Purchase Order; and
  - (b)** ensure the Minor Works are completed by any date for completion nominated in this Purchase Order.
- 4.1.2** If the works described in this Purchase Order do not meet the definition of Minor Works, the Supplier must not undertake the works, and must notify Snowy Hydro immediately.

### **4.2 General obligations of the supplier – Minor Works**

- 4.2.1** The Supplier must ensure, and represents and warrants to Snowy Hydro, that:
- (a)** the Minor Works will be undertaken in a manner that complies with all applicable laws and with any specifications or requirements as advised by Snowy Hydro;
  - (b)** in entering into and performing its obligations under this Purchase Order it has not, and will not, be in breach of any law or any obligation owed to a third party;
  - (c)** the Supplier and all of its employees and subcontractors hold all such licences, permits, registrations and certifications as required by law to undertake the Minor Works; and
  - (d)** it has the necessary skills, experience, qualifications, resources, technology and know-how to undertake the Minor Works.

### **4.3 Defective Works**

- 4.3.1** If Snowy Hydro reasonably forms the view that the Minor Works do not comply with the requirements in this Purchase Order, whether in whole or in part ("**Defective Works**"), Snowy Hydro may within 6 months of completion of the Minor Works issue a notice to the Supplier in writing:
- (a)** identifying the aspect of the Minor Works that do not comply;
  - (b)** directing the Supplier to rectify the Defective Works; and
  - (c)** specifying a time and date by which the Supplier must rectify the Defective Works.
- 4.3.2** If Snowy Hydro issues a notice under **clause 4.3.1**, the Supplier must at its own cost comply with the requirements of that notice.
- 4.3.3** If the Supplier fails to comply with a notice issued under **clause 4.3.1**, Snowy Hydro may have the relevant works completed by a third party and recover the cost of doing so from the Supplier as a debt due and payable.

### **4.4 Access to the Site**

- 4.4.1** Snowy Hydro must give the Supplier access to sufficient parts of any Snowy Hydro site to allow the Supplier to undertake the Minor Works.
- 4.4.2** The Supplier must comply with all directions of Snowy Hydro in relation to any Minor Works on a Snowy Hydro site, including directions in relation to safety or the protection of the environment.
- 4.4.3** While on a Snowy Hydro site, the Supplier must comply with Snowy Hydro's policies and procedures, as directed by Snowy Hydro, including Snowy Hydro's Life Saving Rules.
- 4.4.4** Snowy Hydro may, in its sole and absolute discretion, have the Supplier or an employee, representative or subcontractor of the Supplier removed from a Snowy Hydro site if Snowy Hydro forms the view that the person is incompetent, negligent or guilty of misconduct, including for a failure to follow any applicable policy, procedure or direction issued by Snowy Hydro.

## **5 PERIODIC ORDERS**

- 5.1** Snowy Hydro does not make any representation in relation to or in any way bind itself to making any directions or acquiring any Goods, Services and/or Minor Works under this Purchase Order, and nothing in or arising out of this Purchase Order gives rise to any express or implied obligation on the part of Snowy Hydro or right of the Supplier to be the sole or exclusive provider of the Goods, Services and/or Minor Works to Snowy Hydro.

**5.2** If an authorised representative of Snowy Hydro nominated in this Purchase Order directs the Supplier to supply Goods, Services and/or Minor Works, then the Supplier must supply them in accordance with the terms and conditions of this Purchase Order, and provide written notice to Snowy Hydro confirming the supply and include in that notice all details that Snowy Hydro may reasonably require to enable Snowy Hydro to verify the supply.

## **6 INDEMNITY**

**6.1** The Supplier indemnifies Snowy Hydro on demand against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by Snowy Hydro arising directly or indirectly as a result of or in connection with:

- (a)** any death or injury to persons; or
- (b)** any loss or damage to Snowy Hydro's or a third party's real or personal property, caused by any negligent act or omission of the Supplier.

**6.2** The indemnity in clause 6.1 is reduced proportionally to the extent that Snowy Hydro, its employees, or representatives has contributed to any of of the loss suffered.

**6.3** Neither party shall have any liability to the other for cost of capital, costs of financing, loss of business opportunities or goodwill, loss of use or production, loss of profit, business, contracts, revenues or anticipated savings, or loss of future contracts, or any financial or economic loss in each case whether direct or indirect whether or not foreseeable at the date upon which the parties entered into the Contract and whether such liability is based in contract, indemnity, warranty, tort (including negligence of any kind), strict liability or otherwise.

## **7 TERMINATION OR AMENDMENT OF A PURCHASE ORDER**

**7.1** A party ("**Party A**") may terminate a Purchase Order by written notice to the other party ("**Party B**") if Party B breaches the requirements of the Purchase Order and does not remedy that breach within seven (7) calendar days of being provided notice of the breach by Party A.

**7.2** If a Purchase Order is terminated, the Supplier must immediately cease the manufacture, packaging and/or delivery of all or part of any Goods, cease the provision of any Services and stop undertaking any Minor Works.

**7.3** If Snowy Hydro amends a Purchase Order ("**Purchase Order Amendment**") or a Purchase Order is terminated:

- (a)** Snowy Hydro must reimburse the Supplier for any reasonable costs incurred by the Supplier in respect of the termination of the Purchase Order or the Purchase Order Amendment, but only where and to the extent that the Supplier provides written evidence of such costs to the satisfaction of Snowy Hydro; and
- (b)** the Supplier must refund or credit to Snowy Hydro any amount paid by Snowy Hydro to the Supplier prior to the termination or the date of the Purchase Order Amendment in respect of the Goods and/or Services and/or Minor Works (as the case may be) to which the terminated Purchase Order or the Purchase Order Amendment relates.

## **8 PAYMENT**

**8.1** For each supply of Goods, Services and/or Minor Works accepted by Snowy Hydro, the Supplier may submit a claim for payment to Snowy Hydro in the form of a tax invoice.

**8.2** Each tax invoice submitted by the Supplier to Snowy Hydro must show:

- (a)** the Purchase Order number that the invoice relates to;
- (b)** Snowy Hydro's ABN and address;
- (c)** the words "tax invoice" where GST is applicable to any of the Goods and/or Services and/or Minor Works being supplied;
- (d)** the Supplier's name and ABN;
- (e)** if Goods were supplied: a breakdown of the type of Goods supplied; the quantity of those Goods; the price per Good; and the total cost for the provision of all Goods to which the tax invoice relates;
- (f)** if Services were provided: a description of the Services provided and the total cost of the Services to which the tax invoice relates; and
- (g)** if Minor Works were undertaken: a description of the Minor Works undertaken and the total cost of the Minor Works to which the tax invoice relates.

**8.3** The tax invoice must be submitted to: Accounts Payable Officer, PO Box 332, Cooma NSW 2630 or by email to [ap@snowyhydro.com.au](mailto:ap@snowyhydro.com.au)

**8.4** Snowy Hydro must pay the Supplier within 30 calendar days of receipt of the tax invoice for each accepted supply of Goods, Services and/or Minor Works, unless Snowy Hydro has rejected the tax invoice in writing, with reasons.

**8.5** Any payment made by Snowy Hydro is without prejudice to Snowy Hydro's rights, including (without limitation) Snowy Hydro's rights in relation to Defective Goods, Defective Services and/or Defective Works and the right to demand a refund of any amount paid in error.

## 9 GOODS AND SERVICES TAX

- 9.1 Unless otherwise expressly stated, any amounts payable for a supply made under this Purchase Order are exclusive of GST.
- 9.2 Subject to the Supplier providing a valid tax invoice, Snowy Hydro will pay any GST payable in respect of the supply, in addition to the amounts payable under this Purchase Order.

## 10 MISCELLANEOUS

- 10.1 If there is any inconsistency between these Purchase Order General Conditions, the Purchase Order and the Supplier's tax invoice or other trading terms, whether past, present or future, the following order of precedence will apply to the extent of the inconsistency:
- (a) Snowy Hydro Limited Purchase Order General Conditions;
  - (b) Purchase Order; then
  - (c) any documents issued by the Supplier.
- 10.2 The Supplier must maintain and take all reasonable steps to maintain Snow Hydro's Confidential Information in strictest confidence, use that Confidential Information solely for the purpose of supplying the Goods and/or providing the Services and/or conducting Minor Works (as the case may be) to Snowy Hydro and if requested in writing by Snowy Hydro to do so, must securely return to Snowy Hydro all Confidential Information within 14 calendar days, as well as removing and/or destroying all Confidential Information retained by the Supplier .
- 10.3 The Supplier must not directly or indirectly make use of any Intellectual Property of Snowy Hydro, except with the prior written consent and for the benefit of Snowy Hydro.
- 10.4 The Supplier must not, without the prior written approval of Snowy Hydro, subcontract all or any part of its obligations under the Purchase Order.
- 10.5 The Supplier must, at its own cost, maintain Public Liability Insurance for at least \$10,000,000 and Worker's Compensation Insurance for all employees of the Supplier unless alternative insurance has been agreed, in writing, by Snowy Hydro and noted on page 1 of the Purchase Order.
- 10.6 Nothing in these Purchase Order General Conditions is intended to create a partnership, joint venture or agency relationship between Snowy Hydro and the Supplier. The Supplier acknowledges that it has no authority to bind Snowy Hydro.
- 10.7 These Purchase Order General Conditions may only be varied by agreement between the parties in writing.
- 10.8 Neither party may assign the Purchase Order without the written approval of the other party, which must not be unreasonably withheld.
- 10.9 These Purchase Order General Conditions are subject to the laws in force in New South Wales.
- 10.10 The Supplier must not, and must ensure that its representatives (including its employees, officers, agents, subcontractors and related corporate entities) do not make any public disclosures, announcements or statements in relation to the provision of Services, supply of Goods or performance of Minor Works (as relevant), without Snowy Hydro's prior consent and if such disclosure, announcement or statement is required as a matter of law, such consent will not be unreasonably withheld.
- 10.11 Clauses 6, 7.3 and 10 survive termination and expiration of this Purchase Order.

## 11 DEFINITIONS

- 11.1 In these Terms and Conditions:

**"Confidential Information"** means, in relation to Snowy Hydro, information of every kind that is marked "confidential", is by its nature confidential, or the Supplier knows or ought to know is confidential, that in any way relates to the Services, the Goods, the Minor Works or Snowy Hydro, whether in oral, documentary, visual or any other form, that is disclosed by Snowy Hydro or any representative of Snowy Hydro or comes to the knowledge of the Supplier in the course of supplying the Goods and/or providing the Services and/or conducting the Minor Works;

**"Intellectual Property"** means all rights, titles and interests, including the right to apply for the registration, wherever subsisting throughout the world and whether registered or not, in and to: copyright, author's rights (including moral rights), neighbouring rights, rights for the protection of contents of databases, the protection of circuit layouts, rights of topography, designs, inventions, patents, utility models, trade marks and any right contemplated by a treaty, convention or instrument administered by or under the auspices of the World Intellectual Property Organisation;

**"Goods"** means the goods required by Snowy Hydro (if any) as specified in the Purchase Order;

**"Life Saving Rules"** means the rules that all Snowy Hydro employees and contractors must be aware of and comply with in order to identify and manage life critical risks, and which are available on Snowy Hydro's website or by requesting a copy from the Purchasing Officer specified on the Purchase Order; ;

**“Minor Works”** means physical works with a total cost of less than **\$50,000**, and which do not meet the definition of “High Risk Construction Work” in the *Work, Health and Safety Regulation 2011* (NSW);

**“Purchase Order”** means an order for Goods and/or Services and/or Minor Works, as the case may be, which may be issued by Snowy Hydro to the Supplier in any form under **clauses 2, 3 or 4** which may include: a description of the Goods and/or Services and/or Minor Works required, the total amount to be paid by Snowy Hydro and if the Purchase Order is for the supply of Goods, whether or not the Supplier will be responsible and liable for the delivery of the Goods;

**“Purchase Order General Conditions”** means these Snowy Hydro Limited Purchase Order General Conditions as updated from time to time and made available on Snowy Hydro’s website or, by request, through a Purchasing Officer.

**“Services”** means the services required by Snowy Hydro (if any) as specified in the Purchase Order;

**“Snowy Hydro”** means Snowy Hydro Limited ABN 17 090 574 431; and

**“Supplier”** means the supplier identified in the Purchase Order who is responsible for the supply of the Goods and/or provision of Services to Snowy Hydro and/or undertaking of Minor Works for Snowy Hydro.