

**Australian Electrical Services Pty Ltd ABN 83 056 613 015
Trading As Australian Electrical Services, Australian
Technology Services and Dry Ice WA – Terms and Conditions
of Purchase**

General

1. The terms in this document (“**Terms**”) apply to all supplies of goods and/or services to Australian Electrical Services Pty Ltd ABN 83 056613015 (“**Australian Electrical Services**” or “**AES**”) by any supplier of any goods (“**Goods**”) and/or services (“**Services**”) (Goods and/or Services may be collectively or individually referred to as “**Goods**”) to Australian Electrical Services.
2. These Terms and any related order or request for any supply of Goods provided by Australian Electrical Services (“**Purchase Order**”) constitute the whole of the contract for the supply of Goods by the Supplier (“**Agreement**”) and supersedes and applies to the exclusion of all other agreements, terms, conditions, representations or understandings between the Supplier and Australian Electrical Services in relation to Goods (whether now or in the future), whether or not any inconsistency arises and whether or not there has been any counter-offer of the Agreement or if the terms of this Agreement are the last incorporated into, referred to, or communicated during any course of conduct between Australian Electrical Services and the Supplier. For the avoidance of doubt, no conduct of AES (including any email correspondence) shall be taken to be an acceptance of any other terms, conditions, arrangements, representations or understanding in relation to the Goods and Services.
3. The parties acknowledge and agree that the relationship between the Supplier and Australian Electrical Services is strictly a relationship of supply and purchase of Goods and/or Services and nothing in any Agreement will constitute any other type of relationship between the parties.
4. The Agreement with the Supplier is non-exclusive and Australian Electrical Services may engage any other person to provide the Goods or Services or similar goods or services from time to time.
5. The Supplier acknowledges and agrees that time is of the essence in effecting delivery of the Goods or performance of any Services.

Acceptance

6. Without prejudice to any other method of accepting this Agreement, the delivery of the Goods or the commencement of performance of any supply of the Goods by the Supplier or within 2 business days from receipt of the Purchase Order by the Supplier will constitute acceptance by the Supplier of the Agreement.

Price

7. Unless agreed otherwise, the parties agree that any price or other consideration specified in a Purchase Order for Goods includes:
 - a. all costs of testing, inspection, labelling, packing and delivery to, offloading and installation at any Delivery Point as specified in the Purchase Order; and
 - b. if applicable, GST.
- 7.1. The Supplier acknowledges and agrees that the Price is a fixed sum for the provision of the Goods, inclusive of all incidentals including (but not limited to) travel, accommodation, site access and training. The Price may not be varied except by written agreement between AES and the Supplier. For the avoidance of doubt, unless by written agreement between AES and the Supplier, the Price will not be varied or adjusted by reason of any variation, fluctuation or

change to any third-party cost, supply chain costs, foreign exchange rates, tariffs, taxes or levies.

Delivery of Goods

8. Unless otherwise agreed by the parties in writing, the Supplier is responsible for the costs of freight, delivery and installation of the Goods to the Delivery Point.
 9. The Supplier must transport or arrange for transport, delivery and installation of the Goods to the Delivery Point:
 - a. complying with the terms of any Purchase Order and Australian Electrical Services’ instructions, and in any event, within the timeframes specified in a Purchase Order;
 - b. by a method which provides adequate protection to the Goods and prevents their damage or deterioration; and
 - c. accompanied by a delivery note clearly showing the following:
 - i. any order number;
 - ii. a description of the Goods;
 - iii. the quantity ordered, the quantity received on delivery; and
 - iv. any quantity on backorder.
 10. The Goods must be received on the Date for Delivery and at the Delivery Point specified in the Purchase Order. If the Supplier fails to meet any such delivery date, that failure will be a breach of an essential term of this Agreement and Australian Electrical Services shall be entitled to immediately cancel all or part of any order or request for Goods and/or Services and this Agreement by giving notice to the Supplier of that cancellation (**Cancellation Notice**). If any deposit has been paid by Australian Electrical Services for the price of any Goods and/or Services, then the Supplier must refund the deposit in full within 2 business days from the date on which it receives the Cancellation Notice from Australian Electrical Services.
- Performance of Services**
11. Unless otherwise agreed by the parties in writing, the Supplier must ensure that the Services are performed at the Delivery Point on the Date for Delivery. Should any change in the Date for Delivery be proposed by the Supplier for any reason, immediate written notice must be given to Australian Electrical Services. Australian Electrical Services reserves the right to accept or reject any such proposal at its absolute discretion.
 12. If Australian Electrical Services rejects a proposal to change the Date for Delivery and the Supplier fails to deliver on the Date for Delivery, then Australian Electrical Services may, by written notice to the Supplier, terminate the Agreement.
 - a. The Supplier acknowledges and agrees that the scope and description for Goods may be determined by AES’s customer, which the Supplier, by accepting a Purchase Order, acknowledges that it has received and approved. Any changes to the scope or description for Goods must be approved in writing in advance by AES.
 - b. The Supplier acknowledges and agrees that any goods provided by AES to the Supplier for the performance of Services are deemed to have been provided to the Supplier in perfect working condition. The Supplier must, upon acceptance of a Purchase Order, advise AES in writing if the Supplier requires any such goods supplied by AES to undergo factory acceptance testing at AES’s premises at the Supplier’s cost.
 - c. The Supplier undertakes and agrees to notify AES with regard to any faults discovered in relation to goods provided by AES to the

Supplier prior to performance of any Services. The Supplier must not attempt to repair such goods without AES's prior written approval.

d. If any goods provided by AES to the Supplier are found by the Supplier to be faulty during and/or after performance of any Services, then full liability for repairs to such goods remains with the Supplier, including but not limited to the extraction of the goods, all freight costs (between AES's factory and any customer premises), re-installation costs & all associated disbursements.

e. Should the Supplier not attend to repairs to such goods within a reasonable timeframe, as directed by AES or AES's customer, then AES shall have the right to assume (by itself or through a third party) performance of the Services and all costs to AES of so doing will be borne by the Supplier.

13. The Supplier acknowledges and agrees that the Services and/or Goods may be described in the Purchase Order (including within a scope of works list) in the form of an item constituting the aggregate of sub-works. AES may in its absolute discretion, by written notice to the Supplier, specify all such sub-works which are necessary and incidental to the satisfactory completion of the aggregate item. The Supplier must comply with the terms of such written direction.

Payment

14. The Supplier's invoices will be paid within 60 days of the end of the month in which the Goods are received, or such other period agreed by the parties, provided that the invoice is correctly rendered, and complies with Australian Electrical Services Purchase Order. In the event of any claim by AES against the Supplier, payment may be withheld until such claim is resolved.

15. The Supplier must provide to Australian Electrical Services a GST-compliant tax invoice that must:

- a. include the correctly calculated amount, reflecting any relevant unit prices (if any), that is due for payment;
- b. ascertains the Goods and/or Services to which it relates;
- c. be accompanied (where necessary or where reasonably requested by Australian Electrical Services) by verifying documentation;
- d. be addressed to the address notified by Australian Electrical Services from time to time;
- e. include any Purchaser Order number, the packing slip/delivery note number and any applicable discounts; and
- f. reflect payment terms in accordance with this Agreement.

Title and risk

16. Property in the Goods passes to Australian Electrical Services on acceptance of any Goods supplied by the Supplier. The Supplier shall not under any circumstances obtain title to any goods of Australian Electrical Services provided to the Supplier by Australian Electrical Services to provide any Services.

17. The Supplier bears all risks of loss and damage to the Goods and any goods provided to the Supplier by AES to provide any Services until acceptance by AES in accordance with this Agreement.

Acceptance of Goods

18. AES may carry out an inspection of the Services and/or Good at any time prior to Delivery. The Supplier must bear the costs of any such

inspection and comply with all reasonable directions of AES as to the time, location and scope of the testing and/or inspection.

19. Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:

- a. a final inspection by AES, which may include, among other things, taking measurements, conducting testing or examination.

and

b. acceptance by AES within a reasonable time (but subject to this Agreement, not more than 90 days) after receipt of the Goods.

20. Acceptance of the Goods by Australian Electrical Services will occur on the date when Australian Electrical Services notifies the Supplier in writing of its acceptance.

a. The Supplier acknowledges and agrees that acceptance of the Goods may be determined by AES's customer, in accordance with

the terms of any agreement between AES and its customer, and that acceptance of the Goods may only occur once AES's customer has provided written confirmation that the Goods have been accepted by AES's customer.

Rejected Goods and/or Services

21. Australian Electrical Services may, within 90 days of delivery of the Goods and/or Services (or such later date as determined by AES's customer in

accordance with the terms of any agreement between AES and its customer), reject any Goods which do not strictly comply with any Purchase

Order. Once the Goods and/or Services have been rejected, AES, may without limiting any other rights or remedies it may have, at its

absolute discretion, require:

a. in the case of either Goods or Services, the Supplier to refund the purchase price of the Goods and/or Services within 7 days; or

b. in the case of the Goods, replacement of the Goods to AES's satisfaction, or providing AES with a credit in respect of the defaulting Goods; and

c. in the case of Services, the re-performance of the Services or refund of the price in respect of the Services.

22. Upon rejection of the Goods and/or Services by AES:

a. title and risk in such rejected Goods immediately re-vests in the Supplier; and

b. the Supplier must, at its cost, remove from the rejected Goods any of Australian Electrical Services intellectual property (if any), including, among other things, any identifying signs or symbols.

23. The Supplier agrees to indemnify Australian Electrical Services against any loss arising out of or in connection with the rejection of the Goods and/or Services.

Warranties relating to Goods

24. The Supplier warrants that the Goods:

a. are safe and free from risk to health and are compliant with all relevant laws;

b. are and will remain free from any security interest (as defined in the PPSA), or any other security, charge or encumbrance;

c. are free from any defect or fault;

d. are of acceptable quality;

e. are clearly and durably labelled, including any appropriate warnings and instructions;

f. are fit for their intended purpose (as communicated by Australian Electrical Services to the Supplier before submitting any Purchase Order or as should

be reasonably understood by the Supplier given the nature of the Goods and any purposes they may match the description and comply with any representations, descriptions, samples or other specifications (including the Specifications)

as to quality, function, performance or design referred to in the Purchase Order; and

h. comply with all applicable laws and regulations, including, among other things, in relation to manufacturing, packaging, labelling and transportation.

Warranties relating to Services

25. The Supplier warrants that:

- a. the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- b. the Services will be performed to the highest standard and in accordance with Australian Electrical Services' Specifications (where those Specifications are made known to the Supplier) or in the absence of such Specifications, in accordance with any applicable standards set by Standards Australia;
- c. the Supplier and its personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
- d. any equipment used on-site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent personnel, to the satisfaction of Australian Electrical Services;
- e. the Supplier has undertaken all necessary enquiries and investigations necessary to ensure compliance with this Agreement and has obtained any information, including technical drawings and/or specifications, for this purpose.

Work on premises

26. The Supplier must comply with all applicable laws and all of Australian Electrical Services (or AES' customer's, if applicable) policies, procedures and directions, including any occupational safety and health policies, procedures or directions as may be issued or notified to the Supplier by AESs from time to time. For the avoidance of doubt, nothing in this Agreement shall create or be deemed to create any liability, responsibility, duty or obligation on the part of Australian Electrical Services with respect to the Supplier's oversight and management of its premises and/or personnel.

27. All chemicals and hazardous materials brought by the Supplier to AES (or Australian Electrical Services' customer's) premises must bear a label stating the identity of the chemical or material and any hazards associated with them.

28. Australian Electrical Services will grant (or procure the grant) to the Supplier access to its or its customer's premises and/or any other facility as agreed in any Purchase Order or otherwise in writing and the Supplier must give Australian Electrical Services (or Australian Electrical Services customer) at least 5 days' notice (or such shorter period as agreed) before commencing any supply of the Goods and/or Services at those premises.

29. Prior to commencement of the supply of any Goods and/or Services, the Supplier must notify Australian Electrical Services of its normal times and periods of work and must give at least 24 hours' notice of any alteration in its working hours or periods of work.

30. The Supplier must at all times consult with Australian Electrical Services and obtain 14 days' prior written approval for any action that is likely to interfere with Australian Electrical Services or its customer's operations.

31. If the Supplier or its personnel fail to comply with any of the requirements of this Agreement, then Australian Electrical Services may, at its discretion, deny that person or those persons access to its or its customer's premises or any other facility, or permit such access subject to terms and conditions Australian Electrical Services will determine to be appropriate.

32. Australian Electrical Services may, subject to its discretion, object to any of the Supplier's personnel (including, without limitation, any contractor, agent or invitee of the Supplier) ("Personnel") who, in the opinion of Australian Electrical Services, are lacking in appropriate skills or qualifications or engages in any misconduct. The Supplier must remove such Personnel upon direction by any representative of Australian Electrical Services requiring it to do so and must not re-engage that person in connection with any Goods and/or Services without prior written consent of Australian Electrical Services.

33. The Supplier acknowledges that nothing in this Agreement confers on it exclusive possession of any premises or facility of Australian Electrical Services or its customers and that it will only be granted access to the extent deemed necessary by AES for the purpose of the supply of the Goods and/or Services.

Consequences of breach

34. Notwithstanding any other clause of these Terms or of the Agreement, in the event of any breach of clauses 26-33, or if AES believes

in its sole discretion that it is in the interests of the health or safety of any person, AES may:

- a. require the Supplier, the Supplier's Personnel, and/or any other person to leave the site on which Services and/or Goods are being supplied immediately; and
- b. require the Supplier and/or any of its Personnel to remove any material or substance from that site at the Supplier's cost.

Suspension by Australian Electrical Services 35.

Notwithstanding any other provision in the Agreement, Australian Electrical Services has the right, at any time and for any reason, to suspend the progress of the whole or any part of the supply of the Goods under this Agreement immediately by notice under this clause.

36. When the Supplier receives a notice of suspension from AES under clause 35, it must suspend the supply of Goods under this Agreement until such time as AES directs that the supply of the Goods is no longer suspended. At such time, the Supplier must promptly recommence the supply of the Goods.

37. If the whole or part of the supply of the Goods is suspended in accordance with this Agreement then AES will pay to the Supplier the verified additional costs necessarily incurred by the Supplier during or arising out of the suspension unless the suspension is caused or contributed to by the non-performance of the supply of Goods by the Supplier or its Personnel or any breach or default by the Supplier of its obligations under the Agreement.

Indemnity and release and liquidated damages

38. The Supplier agrees to indemnify Australian Electrical Services, its affiliated companies, and their representatives, successors, and assigns and hold them harmless from and against any liabilities, howsoever arising, from or in connection with:

- a. any acts, negligence, omissions or willful misconduct of the Supplier;
- b. any breach of any of the Supplier's warranties or any other term of the Agreement;
- c. the Supplier's negligent, unauthorised or wrongful acts or omissions;
- d. any claims that any Goods or Services supplied to Australian Electrical Services infringe any Intellectual Property rights of any person; or
- e. any claim of any lien, security interest or other encumbrance made by a third party.

38A. The Supplier must pay to AES liquidated damages, calculated at 1% of the Purchase Order value (as varied from time to time), for each week (or part thereof) the Date for Delivery is delayed, capped at 10% of the Purchase Order value (as varied from time to time). The payment of liquidated damages does not relieve the Supplier from its obligation to provide the Goods, or from any other of its obligations, warranties and liabilities under or in connection with the Agreement. The Supplier agrees that the payment of liquidated damages provided under the Agreement constitutes a genuine pre-estimate of AES's loss as a consequence of the Supplier's delay. In the event that the liquidated damages are unrecoverable or unenforceable, whether in whole or in part, AES's rights at common law or in equity to recover such amounts are expressly preserved.

38B. As security for the Supplier's performance of its obligations under the Agreement, the Supplier shall provide to, and in favour of, AES two unconditional bank guarantees each to the value of 5% of the Purchase Order value (as amended from time to time). One of the bank guarantees shall be returned to the Supplier upon practical completion of the Services. The remaining bank guarantee shall be returned to the Supplier at the end of the relevant defects liability / warranty period. If the Supplier fails to provide to AES one or more of the bank guarantees within 10 business days of acceptance of the Purchase Order, AES may demand from the Supplier a cash retention of equivalent value (whether by way of set off or otherwise) as security for the Supplier's performance of its obligations under the Agreement. The Supplier agrees that AES may draw upon such bank guarantees or cash retention (or both) in respect of any monies howsoever owing by the Supplier to AES under the Agreement.

Limitation of liability

39. To the maximum extent permitted by law, the maximum aggregate liability of Australian Electrical Services for all claims under or relating to these Terms, whether in contract, tort (including, without limitation, negligence), in equity, under statute, or on any other basis is limited as follows:

- a. Australian Electrical Services shall have no liability to the Supplier for any indirect or Consequential Loss under any Purchase Order;
- b. Australian Electrical Services total aggregate liability for any loss, however arising, is limited to payment of the price under the relevant Purchase Order paid by Australian Electrical Services to the Supplier for the Goods or Services that gave rise to the Loss.

Default and termination

40. Australian Electrical Services may, at its sole discretion, issue a notice of default in the event of a breach of the Agreement by the Supplier, such notice to provide at least 5 business days for the default to be remedied. In default of compliance with a notice issued under this clause, AES may terminate the Agreement.

41. Each of the following occurrences constitutes an event of default:

- a. the Supplier breaches or is alleged to have breached these Terms for any reason (including, but not limited to, failing to supply the Goods and/or Services before the Date of Delivery) and fails to remedy that breach within the timeframe stipulated;

b. the Supplier, being a natural person, commits an act of bankruptcy;

c. the Supplier, being a corporation, is subject to:

i. a petition being presented, an order being made, or a meeting being called to consider a resolution for the Supplier to be wound

up, deregistered or dissolved;

ii. a receiver, receiver and manager or an administration under Part 5.3A of the Corporations Act 2001 (Cth) being appointed to all or

any part of the Supplier's property and undertaking;

d. the Supplier entering into a scheme of arrangement (other than for the purpose of solvent restructuring);

e. the Supplier purports to assign or subcontract its rights or obligations under these Terms without Australian Electrical Services' prior written consent;

or

f. the Supplier ceases or threatens to cease conduct of its business in the normal manner.

42. Upon termination, Australian Electrical Services is entitled to deduct any moneys payable by it to the Supplier, whether under the Agreement or otherwise, from any moneys due or to become due to the Supplier under the Agreement. Australian Electrical Services is entitled to recover from the Supplier any balance that remains owing after deduction.

43. By written notice to the Supplier, Australian Electrical Services may, at any time and at its absolute discretion, terminate this Agreement for convenience, whereupon this Agreement shall immediately cease. The Supplier shall have no entitlement to payment, compensation, damages or other remedy or relief for termination under this clause, unless expressly stated in this Agreement.

Subcontracting and assignment

44. The Supplier must obtain Australian Electrical Services written consent before the Supplier:

- a. subcontracts, assigns, charges or encumbers the Agreement or any rights or obligations under the Agreement; or
- b. advertises or publishes anything concerning the Agreement.

Insurance

45. During the term of the Agreement, the Supplier must, at its own expense:

a. maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least \$20,000,000;

b. maintain appropriate insurance in relation to professional indemnity with a reputable insurer for at least \$5,000,000;

c. maintain workers' compensation in accordance with applicable legislation; and

d. insure the Goods or any goods of Australian Electrical Services or its customer with a reputable insurer for their full replacement cost or value (whichever is the greater) in the possession or control (including through third party contractors of the Supplier) of the Supplier.

46. The Supplier must, upon Australian Electrical Services request, provide AES with certificates of currency with respect to any of the insurance policies set out in clause 45 within 5 business days of the relevant Purchase Order. The insurance policies must provide cover for a period of 6 years after any relevant defects liability period or longer if prescribed by AES's customer.

Waiver

47. Subject to the terms of the Agreement, a right may only be waived in writing, signed by a party giving the waiver, and:

- a. no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver be used for);

of the right or

otherwise prevents the exercise of the right; b. a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
c. the exercise of a right does not prevent any further exercise of that right or of any other right.

Severance

48. If a court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, then that part will be modified (if possible)

so as to make it enforceable. If it cannot be modified, then it will be severed, and the rest of the Terms will continue to operate.

Variation

49. Australian Electrical Services may, prior to delivery of the Goods or performance of the Services, direct the Supplier in writing to add, omit, amend, supplement or replace any Purchase Order specification.

50. Where a direction for a variation would result in variation to the Price, the Supplier must immediately advise AES in writing of the varied

Price (which must be determined by the same method of pricing for the provision of the original Goods and/or Services).

A variation to the

Price is not effective unless it is communicated to Australian Electrical Services and accepted by Australian Electrical Services in writing and signed by its authorised representative.

51. If, in the opinion of the Supplier, a direction for a variation is likely to prevent the Supplier from meeting its obligations under the Agreement, it

must immediately notify AES. Australian Electrical Services, at its absolute discretion, will determine whether the variation will take effect and notify

the Supplier of its decision in writing and may, in its discretion, modify the Agreement to the extent required to enable the Supplier to deliver the variation.

Intellectual Property

52. The Supplier warrants that the Goods and Services, and Australian Electrical Services reasonably foreseeable use of them will not infringe the Intellectual

Property right of any other person. The Supplier agrees to indemnify Australian Electrical Services against breach of this warranty.

53. The Supplier acknowledges and agrees that Australian Electrical Services or its customer shall be the sole and exclusive owner of all Intellectual Property rights related to any and all Goods and/or Services created by the Supplier in the course of, or for the purposes of, supplying the Goods

and/or Services to Australian Electrical Services. The Supplier agrees to assign such Intellectual Property rights to Allied Pumps or its customer and agrees to execute such further documentation as Australian Electrical Services considers necessary in order to support such of the Intellectual Property rights.

54. The Supplier agrees to grant Allied Pump Australian Electrical Services or its customer a licence of all Intellectual Property rights owned by the Supplier and not assigned 53 to enable it to use, modify, maintain and repair the Goods and enjoy the benefit of the Services.

55. All drawings, Specifications, artwork, data, material, supplies, equipment, tooling, dies, moulds, fixtures and patterns furnished or paid for by Australian Electrical Services, are AES' or its customer's exclusive property and must be used by the Supplier only in performance of the Purchase Order. Such property, while in the Supplier's custody and control, must be returned to the Purchaser in good condition, normal

wear and tear accepted, or destroyed by the Supplier upon AES direction.

56. Except for the purposes of the Agreement, the Supplier is not permitted to do any of the following, whether directly or indirectly through

another person or entity, without the prior written consent of AES:

a. reproduce or manufacture, whether for sample purposes or otherwise, any product the Intellectual Property rights in which belong to AES or its customer;

b. reproduce, copy or display the image of any product the Intellectual Property rights in which belong to AES or its customer; or

c. give away, deal with, or sell any product the Intellectual Property rights in which belong to AES or its customer.

Confidentiality

57. The Supplier must ensure that it keeps confidential any confidential information provided to it by AES or its customer and not use or

disclose it, except to fulfil its obligations under the Agreement.

Any information supplied by AES or its customer to the Supplier remains the property of AES or its customer and the Supplier must not disclose that information without prior written consent of

AES or its customer.

58. Clause 57 does not apply to information which is lawfully obtained from a third party not subject to obligation of confidentiality, is public

knowledge, is already known or is otherwise independently developed by the Supplier having not been exposed to that information.

Applicable law

54. The Agreement is governed by the law of Western Australia.

55. Any legal action in relation to each contract against any party or its property may be brought in any court of competent jurisdiction in the state of Western Australia, and the parties submit to the exclusive jurisdiction of that state.

Force Majeure

56. Australian Electrical Services will not be responsible for any delay in or failure of performance of its obligations under the Agreement which is caused by circumstances beyond its control, including but not limited to, strikes, lock-outs, labour disturbances, acts of government, riot, civil war, commotion, fire, flood, failure of power supply, epidemic, pandemic or similar event and shall not be liable for any loss, including

Consequential Loss, damage, expense or claim suffered by the Supplier or any other party as a result of any such event.

Notices

57. Where, pursuant to these Terms, a party is required to give notice to the other party, such notice must be:

a. in writing; and

b. signed by a person authorised by the sender.

58. A notice is deemed to have been given and served on a party:

a. if delivered personally, on the same day on which it was delivered;

b. if sent by post, it is taken to have been given on the day it would have been delivered in the ordinary course of post;

c. if sent by fax, at the time recorded on the transmitting machine;

d. if sent electronically, at the "time of dispatch" within the meaning of section 13 of the Electronic Transactions Act 2001 (WA).

Dispute Resolution

59. In the event of any dispute arising in connection with the Agreement;

- a. either party shall give to the other a notice setting out the particulars of the dispute and must follow the procedure for dispute resolution in accordance with the following clauses prior to the commencement of any proceedings.
- b. Within 5 business days of receipt of a notice under this clause, the AES's representative and the Supplier's representative shall meet to attempt to resolve the dispute.
- c. If the dispute is not resolved, an officer of each of the parties must meet within 5 business days of the meeting referred to in (b) above, to attempt to resolve the dispute.
- d. If the dispute is still not resolved, the parties must refer the dispute to mediation in accordance with the Institute of Arbitrators & Mediators Australia Mediation Rules.
- e. If the dispute is not resolved by mediation, either party may commence litigation.

Interpretation

60. In these Terms:

- a. Agreement means an agreement between AES and the Supplier for the supply of any Goods and/or Services constituted by:
 - i. Purchase Order;
 - ii. these Terms;
 - iii. any agreed written variation; and
 - iv. any other document which is attached to, or incorporated by reference in, the Purchase Order or these Terms.
- b. Consequential Loss includes special, indirect, consequential, incidental or punitive damages or damages for loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay and whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence) in equity, statute or otherwise.
- c. Date for Delivery means the date for delivery of the Goods and/or performance of the Services as set out in the Purchase Order.
- d. Delivery Point means the address for delivery of any Goods, or where the Goods comprise services (wholly or partially) the performance of services, as stipulated in the relevant Purchase Order.
- e. Goods means any item of whatsoever nature which is purchased or to be purchased by Australian Electrical Services from the Supplier, as described in any Purchase Order. Unless the context otherwise requires, in this Agreement the term 'Good' also includes 'Services'.
- f. GST Act means the A New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
- g. GST means the tax payable on certain goods within the meaning of the GST Act.
- h. Intellectual Property rights means intellectual property rights at any time protected by statute or common law, including, among other things, copyright, trademarks, patents and registered designs;
- i. PPSA means the Personal Property Securities Act 2009 (Cth).
- j. Price means the total purchase price of the Goods and/or Services as indicated in the Purchase Order.
- k. Services means any services that are provided or to be provided by the Supplier to Australian Electrical Services s, including but not limited to any

services in connection with the supply and installation of any pumps or any like Goods. Unless the context otherwise requires, in this

Agreement the term 'Services' also includes 'Goods'.

l. Specifications means any technical or other specification relating to the Goods and/or Services referred to in the Purchase Order and details of which have been made available by Australian Electrical Services, including by accessibility via Australian Electrical Services website to the Supplier.

61. Unless the context or subject matter otherwise requires, in these Terms:

- a. the singular includes plural and vice versa;
- b. a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- c. if a party consists of more than 1 person, the Agreement binds each of them separately and any 2 or more of them jointly;
- d. an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and
- e. time is of the essence in respect of all of the Supplier's obligations to Allied Pumps.

62. Without limiting clause 2 of these Terms:

- a. in the case of any inconsistencies between the terms of the Agreement, the terms of AP's customer and the terms of the Supplier, the terms of the Agreement shall take precedence, followed then by the terms of AP's customer, followed then by the terms of the Supplier;
- b. in the case of any ambiguity or omission from the terms of this Agreement, AP may provide written direction to the Supplier to clarify, adjust, supplement or amend the terms of this Agreement. The Supplier must comply with any written direction under this clause.

63. Where this Agreement provides for any particular, date, matter, item or specification be included in any other document (including within a Purchase Order), AES may provide that particular, date, matter, item or specification in a separate written notice in lieu of, or in supplement to, the prescribed document. This Agreement shall thereafter be construed as though the relevant particular, date, matter, item or specification was contained within the

prescribed document ■