

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

**1. Purchase Order**

- 1.1 The Supplier must supply the Goods and/or Services to the Company in accordance with, and as specified in, this Purchase Order, in consideration of payment of the Price by the Company.
- 1.2 These Purchase Order Terms and Conditions form part of the Purchase Order for the supply of the Goods and/or Services. The Purchase Order comprises the entire agreement between the parties in respect of its subject matter.
- 1.3 The Supplier accepts the terms of the Purchase Order as the sole basis of the purchase to the exclusion of any terms or conditions of purchase in any document of the Supplier or any prior agreements.
- 1.4 The Company will provide a Purchase Order number which the Supplier must quote on all invoices and correspondence.
- 1.5 The Supplier does not have the exclusive right to provide the Goods and/or Services to the Company. Accordingly, the Company may at its sole discretion retain other suppliers or providers of goods and/or services similar to the Goods and/or Services and other related goods and/or services. Other than as provided on the Purchase Order, the Company is not expected or required to purchase any minimum level of Goods and/or Services.

**2. Benefit of this Purchase Order**

- 2.1 The Company enters into this document on its own behalf and as disclosed agent and on trust for each related body corporate of the Company.
- 2.2 The Supplier must make the Goods and / or Services available to the Company and its related bodies corporate.
- 2.3 The Supplier acknowledges and agrees that:
- this Purchase Order is for the benefit of the Company and each Related Body Corporate of the Company; and
  - in addition to the Company, any other Related Body Corporate of the Company may, on the same basis as the Company, recover from the Supplier any Loss suffered or incurred by that related body corporate of the Company despite not being a party to this document but such recovery will always only be limited to the rights under the terms of this document which would be available to the Related Body Corporate of the Company as if it were a party to this document.

**3. Services**

- 3.1 The Supplier must perform the Services and supply all parts, materials or goods necessary

for the proper completion of the Services in accordance with this Purchase Order.

- 3.2 The Supplier must comply with the Company's Standards and Procedures.
- 3.3 The Supplier must perform the Services by the Due Date or, if no date is specified, within a reasonable time of the date of execution of the Purchase Order.
- 3.4 The Supplier must notify the Company as soon as it becomes aware that the Services may not be performed by the Due Date.

**4. Goods**

- 4.1 The Supplier must deliver the Goods to the Delivery Address by the Delivery Date.
- 4.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.
- 4.3 Packages must be marked with the Purchase Order number, item number, Delivery Address, contents, quantity, date and method of dispatch and weight of each package.
- 4.4 The Supplier must supply any incidental services reasonably required in connection with the supply of the Goods, including as specified in the Purchase Order.
- 4.5 If the Supplier provides incidental services at Site, the Supplier must comply with the
- 4.6 Company's Standards and Procedures.
- 4.7 The Supplier must notify the Company as soon as it becomes aware that the Goods may not be delivered by Delivery Date.

**5. Supplier's Warranties - Services**

- 5.1 The Supplier warrants that any Services provided under this Purchase Order will:
- meet the Company's requirements as set out in the Specification and the Purchase Order;
  - be provided with all due care and skill that would be expected from a qualified, competent and experienced supplier of similar goods and/or services;
  - comply with Good Industry Practice;
  - comply with all applicable Laws; and
  - not infringe the Intellectual Property Rights of any person.
- 5.2 Where the Services involve the Supplier working on or affixing parts to Existing Plant, the Supplier warrants that:
- those parts will properly connect to the Existing Plant and will operate correctly with, and not damage, the Existing Plant; and
  - neither the Services nor any parts will adversely impact on, nor cause any

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

deterioration or diminution in the performance of, the Existing Plant.

- 5.3 The warranties contained in this clause 5 are in addition to any warranties which are or may be implied under any applicable Law (including the *Competition and Consumer Act 2010* (Cth) and any relevant state based sale of goods legislation).

## 6. Supplier's Warranties - Goods

- 6.1 The Supplier warrants that any Goods provided under this Purchase Order will:
- (a) be free from defects;
  - (b) be free of any security interest or other encumbrance;
  - (c) be fit for the purpose specified on the Purchase Order or if not specified, their intended purpose;
  - (d) be of merchantable quality;
  - (e) conform with any sample provided;
  - (f) be new as at the date of supply (unless specified to the contrary in the Purchase Order);
  - (g) comply with all applicable Laws; and
  - (h) not infringe the Intellectual Property Rights of any person.
- 6.2 Where Goods are intended to be affixed to Existing Plant, or where the Supplier will be providing incidental services in relation to Existing Plant, the Supplier warrants that:
- (a) the Goods will properly connect to the Existing Plant and will operate correctly with, and not damage, the Existing Plant; and
  - (b) neither the Goods nor any incidental services will adversely impact on, nor cause any deterioration or diminution in the performance of, the Existing Plant.
- 6.3 The warranties contained in this clause 6 are in addition to any warranties which are or may be implied under any applicable Law (including the *Competition and Consumer Act 2010* (Cth) and any relevant state- based sale of goods legislation).
7. **Variations**
- 7.1 The Supplier may request changes to the Purchase Order, by written notice to the Company Contact, in response to which the Company Contact may (but shall be under no obligation to) issue a changed Purchase Order. Any change to the Purchase Order must be agreed in writing by the Company Contact (and any such agreement may be given in the Company Contact's absolute discretion).
- 7.2 The Supplier must not change or vary the Goods and/or Services specified as to be

supplied under this Purchase Order.

## 8. Compliance with Laws including Work, Health, Safety and Environmental Management

- 8.1 The Supplier must be aware and comply with, and ensure that the Supplier's Personnel are aware of and comply with:
- (a) all applicable Law in performing its obligations;
  - (b) all Standards and Procedures; and
  - (c) all lawful directions and orders given by the Company Contact or any person authorised by Law or the Standards and Procedures to give directions to the Supplier.
- 8.2 The Supplier must, in supplying the Goods or performing the Services, co-operate with, do all things necessary to assist and refrain from doing anything that may impede the Company or its Personnel in discharging their obligations under any Law.
- 8.3 The Supplier must in supplying the Goods or performing the Services ensure that the Supplier's Personnel entering the Delivery Address or Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Delivery Address or Site.
- 8.4 The Supplier must, before performing any of its obligations on the Site, provide the Company with written risk assessments and safe work procedures (which must be consistent with the Supplier's obligations under applicable Laws and the Standards and Procedures), including a safe work method statement where required by the applicable Laws.
- 8.5 The Supplier must, in supplying the Goods or performing the Services, take all reasonable steps to co-operate with the Company, Company Contact and any other Company contractor at or near the Delivery Address or the Site.
- 8.6 The Supplier must not interfere with the Company's activities or the activities of any other person at the Delivery Address or the Site.
- 8.7 Where the Supplier supplies or uses Plant in supplying the Goods or performing the Services, the Supplier agrees that it:
- (a) has management and control of the Plant until the Company accepts the Plant;
  - (b) must obtain and provide to the Company all relevant information about the Plant, including, but not limited to the information that the Supplier must obtain and provide under the applicable Laws; and

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

- (c) is responsible for ensuring that all obligations regarding registration of the Plant under the applicable Laws have been complied with.
- 8.8** The Supplier must ensure that no asbestos or asbestiform fibrous materials are used in the performance of its obligations under this Purchase Order.
- 8.9** If a hazardous substance is delivered by the Supplier in the performance of its obligations under this Purchase Order, the Supplier must provide current safety data sheets.
- 8.10** The Company reserves the right to immediately stop the Supplier from performing any of its obligations on the Site where there is any suspected or actual breach of this clause 8.
- 9. Testing and Acceptance**
- 9.1** The Company may, as a precondition to payment:
- (a) request that the Supplier provide manufacturer's test certificates in respect of the Goods; or
- (b) itself test, or require the Supplier to test, the Goods and/or Services in accordance with a pre-agreed testing regime included in the Specification or notified by the Company to the Supplier prior to delivery;
- 9.2** If the Company exercises its rights under clause 9.1, it will advise the Supplier immediately when it is satisfied that the Goods and/or Services comply with this Purchase Order and can be accepted.
- 9.3** If the Company considers that the Goods and/or Services do not comply with this Purchase Order, the Company may at its option reject those Goods and/or Services, or require the Supplier to immediately rectify, re-perform or replace those Goods and/or Services at its cost.
- 10. Warranty Period**
- 10.1** The Supplier must, at its cost, repair, replace or otherwise make good any errors or defects in the Goods and Services notified to the Supplier during the twelve (12) month period from the latter of:
- (a) the date of delivery of the last of the Goods (regardless of the Delivery Date specified on the Purchase Order); and/or
- (b) the date of completion of the Services (regardless of the Due Date specified on the Purchase Order).
- 11. Ownership and Risk**
- 11.1** Title in the Goods passes to the Company on the earlier of delivery or payment in respect of the Goods or Services.
- 11.2** Notwithstanding the transfer of ownership in clause 11.1, risk in and responsibility for the Goods, including risk of loss or damage to the Goods, remains with the Supplier until delivery has occurred.
- 11.3** Delivery will be deemed to have occurred when the Goods have been unloaded at the Delivery Address, and the Company has accepted the Goods, or 10 Business Days have passed.
- 11.4** Nothing in this Purchase Order prevents the Company from registering its interest in the Goods for the purposes of the PPSA.
- 12. Price**
- 12.1** The Company must pay the Price not later than 30 days after the last day of the month in which a valid tax invoice for the accepted Goods and/or Services is received, except where the Company disputes the invoice, in which case the Company may notify the Supplier accordingly and withhold payment of the disputed part of the invoice pending resolution of the dispute.
- 12.2** Unless otherwise specified on the Purchase Order, the Price is payable in Australian currency and is not subject to variation.
- 12.3** The Price is inclusive of:
- (a) all charges for packaging, packing, insurance, and delivery of the Goods.
- (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services.
- (c) the Supplier's compliance with its obligations under this Purchase Order; and
- (d) Taxes.
- 13. Assignment & Subcontracting**
- 13.1** The Company may assign and/or novate its rights and obligations under this Purchase Order at any time. The Company shall notify the Supplier of any such assignment or novation, but shall not be required to obtain its consent.
- 13.2** The Supplier must not assign or sub- contract its rights or obligations under this Purchase Order without the Company's prior written consent, not to be unreasonably withheld.
- 14. Supplier's Personnel**
- 14.1** The Supplier must keep full and proper records of work performed by the Supplier (including records of the hours worked by each of the Supplier's Personnel in providing Services) and provide a copy to the Company on request.

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

- 14.2** The relationship between the Company and the Supplier is that of a Company and an independent contractor. Nothing in this Purchase Order will constitute or deem the Supplier, nor any of the Supplier's Personnel, an employee, agent or partner of the Company.
- 14.3** The Supplier remains liable for each act and omission of its Personnel as though it were an act or omission of the Supplier.
- 15. Intellectual Property Rights**
- 15.1** Subject to the terms of this clause 15, a party's Background IP remains vested in that party.
- 15.2** All Intellectual Property Rights in anything created or supplied by the Supplier in the course of performing its obligations under this Purchase Order vests in the Company upon its creation.
- 15.3** The Company grants the Supplier the right to use anything provided by the Company to the Supplier solely for the purposes of this Purchase Order, but the Supplier must return any such things to the Company on termination of this Purchase Order or upon demand.
- 16. Indemnity and Insurance**
- 16.1** The Supplier must indemnify the Company and its Related Bodies Corporate from and against any Loss arising out of or in connection with the Supplier's performance of its obligations under the Purchase Order and in respect of:
- (a) breach of clauses 23, 24, 25, 26, 27, 28 or 29;
  - (b) loss of, or damage to, the real or personal property of any person, including the Company;
  - (c) death, personal injury, illness or disease of any person; and
  - (d) infringement of the Intellectual Property Rights of a third party.
- 16.2** The Supplier's liability to indemnify the Company under clause 16.1 will be reduced proportionally to the extent (as permitted by Law) that any such Loss was caused by a negligent act or omission of the Company.
- 16.3** Except for the Supplier's liability under clause 16.1 and clauses 23, 24, 25, 26, 27, 28 or 29, neither party is liable for any Indirect Loss arising out of the Purchase Order, whether in contract, tort (including negligence) or any other basis in law or equity.
- 16.4** The Supplier must effect and maintain:
- (a) If the Goods and/or Services involve the installation of Goods, contract works insurance in the joint names of the Company and the Supplier covering physical loss of or damage to the Goods and their installation and/or any work done in the course of the Services and materials or items supplied in connection with or forming part of the Services for an amount not less than their replacement value (including escalation/inflation costs). The insurance policy must be extended to include:
    - (i) the cost of removal of material and debris from the Site including demolition costs;
    - (ii) storage off site and in transit to the Site;
    - (iii) professional/consultants fees and expediting expenses;
    - (iv) planning and design; and
    - (v) defects liability period for not less than 12 months.
  - (b) a policy of public and products liability insurance to cover liability for loss or damage to any property, or injury or illness or death to any person, for an amount not less than \$20 million for any one claim (and in the annual aggregate in respect of products). The Policy must extend to include a "Company's Indemnity Clause" which indemnifies the Company for its vicarious liability arising from the Suppliers performance of its obligations under this Purchase Order;
  - (c) a policy of professional indemnity insurance for an amount not less than \$5 million for any one claim and in the annual aggregate, that covers the obligations of the Supplier for performance of Services of a professional nature under this Purchase Order, and maintain such policy in place for a period of 6 years following termination or expiration of this Purchase Order or alternatively 6 years run-off cover to be obtained by the Supplier for an amount not less than \$2 million any one claim and \$2 million for all claims in the aggregate during any one 12 month period of insurance. The insurance policy must be extended to include:
    - (i) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, intellectual property, and trade mark;
    - (ii) loss of or damage to documents, data, software and computer programs;
    - (iii) claims made under Schedule 2 (The Australian Consumer Law) section 18 of the Competition and Consumer Act 2010 (Cth), the corresponding section of the Fair Trading Act 2010 (WA) and any similar legislation in any other State or Territory in so far as they relate to

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

- the provision of Services provided in connection with the Purchase Order;
- (d) a policy of motor vehicle third party property damage and bodily injury insurance (other than already covered by statutory motor vehicle insurance to cover liability to third parties, including the Company, arising from the use of any motor vehicle in connection with the provision of Goods and Services for an amount not less than \$20 million for any one claim; and
- (e) a policy of statutory motor vehicle bodily injury insurance (CTP) in respect of any vehicles used by the Supplier in the performance of this Purchase Order;
- (f) a workers compensation policy of insurance covering the legal liability of the Supplier to their employees under statute and where applicable, at common law; and
- (g) any other insurance which is required by applicable Law or which a prudent and competent Supplier of goods and services similar to the Goods and Services would maintain.
- 17. Termination**
- 17.1** Either party may terminate this Purchase Order:
- (a) if the other party is in breach of any of its obligations under this Purchase Order, and the breach has not been remedied with 10 days of being notified of the breach; or
- (b) for convenience on 30 days written notice to the other party.
- 17.2** If this Purchase Order is terminated under clause 17.1, the Company will pay the Supplier for:
- (a) any part of the Goods delivered or Services performed prior to the date of termination but not yet paid for; and
- (b) in relation to any part of the Goods and/or Services to which title has passed in accordance with clause 11.1 but which have not yet been delivered, on delivery of those Goods and/or Services,
- subject to the Supplier using best endeavours to mitigate all costs of termination.
- 18. Notices**
- 18.1** A notice under this Purchase Order must be in writing and sent via email or post to the address on the Purchase Order.
- 19. Governing Law and Dispute Resolution**
- 19.1** This Purchase Order and any dispute arising out of it is governed by the laws of the state specified in the Purchase Order, or if not specified, the laws of the state in which the Delivery Address is situated.
- 19.2** If there is a dispute between the parties arising out of or in connection with this Purchase Order, then within ten days of a party notifying the other party of that dispute, senior representatives from each party must meet and use reasonable endeavours to resolve the dispute by negotiation.
- 19.3** If the parties fail to resolve the dispute by negotiation in accordance with clause 19.2, then either party may commence legal proceedings.
- 19.4** Nothing in this clause 19 prevents a party from seeking urgent injunctive relief from a court.
- 19.5** Subject to clause 12.1, the parties must continue to perform their respective obligations under this Purchase Order despite the existence of a dispute.
- 20. Confidentiality**
- 20.1** Subject to clause 20.2, a party must not, and must ensure that its Personnel do not, without the prior written approval of the other party, disclose or use Confidential Information other than as strictly necessary for the purpose of fulfilling its obligations under this Purchase Order.
- 20.2** A party may disclose Confidential Information:
- (a) as required by applicable Law;
- (b) where such information ceases to be confidential, other than due to a breach of clause 20.1; or
- (c) where such information is received from a third party, provided that it was not acquired by the third party in breach of this clause 20 or any other confidentiality undertaking.
- 20.3** The Company may, to the extent required, disclose Confidential Information of the Supplier to the Foreign Investment Review Board.
- 21. FIRB Restricted Data Security**
- 21.1** Notwithstanding any other clause of this Purchase Order, if the Supplier collects, holds, uses, discloses or otherwise deals with FIRB Restricted Data in connection with the Purchase Order, the Supplier and all Personnel must:
- (a) only do so to the extent required for the purpose of this Purchase Order;
- (b) store FIRB Restricted Data only within Australia;
- (c) only allow access to FIRB Restricted Data from within Australia and must not take FIRB Restricted Data outside of Australia;

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

- (d) not export any FIRB Restricted Data and put in place appropriate security controls, to prevent the export FIRB Restricted Data;
- (e) keep the FIRB Restricted Data confidential and protect it from unauthorised destruction, loss, alteration or disclosure or access; and
- (f) upon expiry or termination of this Purchase Order, as requested by the Company return, destroy or de-identify all FIRB Restricted Data to the Company's satisfaction.
- 21.2** if the Supplier maintains, accesses, operates or controls the Company's generation, transmission or distribution systems or associated ICT infrastructure, the Supplier must:
- (a) only undertake any such maintenance from within Australia. If such maintenance requires either physical servicing of components offshore or the acquisition of replacement components from outside Australia, the Supplier may do so but only with the prior written consent of the Company; and
- (b) ensure that such systems and associated ICT infrastructure can be accessed, operated and controlled only from within Australia.
- 21.3** The Supplier must ensure that any person it has engaged in connection with this Purchase Order (including without limitation the Supplier's Personnel) complies with this clause 21.
- 21.4** The Supplier must:
- (a) promptly cooperate with any requests, enquiries and reasonable directions from the Company in relation to the management of FIRB Restricted Data and compliance with this clause 21;
- (b) within 30 days of a request from the Company to do so, provide the Company with an audited compliance statement, certifying by an independent third party auditor the Supplier's compliance with this clause 21 and detailing the Supplier's holdings, storage and accessibility of FIRB Restricted Data;
- (c) immediately notify the Company if it becomes aware of a suspected or actual breach of this clause 21; and
- (d) immediately notify the Company in advance if any aspect of the Supplier's operations, service delivery model or information management processes are likely to change which may result in non-compliance with any aspect of this clause 21.
- 21.5** management processes are likely to change which may result in non-compliance with any aspect of this clause 21.
- 21.6** If the Supplier is in breach of this clause 21 and does not rectify such breach within 14 days of receiving a written notice from the Company to do so, the Company may terminate the Purchase Order upon written notice to the Supplier with immediate effect and without financial penalty or cost.
- 21.7** The Company may disclose the Confidential Information of the Supplier and the Supplier's Personnel to the extent required by law, including without limitation to the Foreign Investment Review Board.
- 22. Modern Slavery**
- 22.1** The Supplier represents and warrants that:
- (a) neither it nor any of its Personnel or Related Bodies Corporate have been convicted of or been the subject of any enforcement proceedings by a governmental or regulatory body relating to a modern slavery or human trafficking offence;
- (b) it has carried out reasonable due diligence to identify and assess modern slavery risks in its supply chains and operations;
- (c) it has taken, and is taking, reasonable steps to address and mitigate modern slavery risks in its supply chains and operations;
- (d) it will notify the Company as soon as reasonably practicable of any instances of modern slavery;
- (e) it has read and agrees to comply with the Company's Supplier Code of Conduct and will provide evidence to the satisfaction of the Company which validates the Supplier's compliance with this clause.
- (f) If requested, the Supplier will permit the Company or its nominated representative/s to undertake verification activities to validate the Supplier's compliance with this clause, including access to the Supplier's premises and records as required.
- (g) In the event that the Supplier does not remedy, or provide an acceptable plan to remedy, any identified instances of modern slavery within the time frame specified by the Company, the Company reserves the right to terminate this Purchase Order in accordance with clause 17.1.
- (h) The Supplier must ensure that each subcontract it enters into in relation to this Purchase Order includes a clause similar in effect to this clause 22.
- 23. Handling of Regulated Information**
- 23.1** The Supplier will not be required to create, receive, collect, store, access, disclose, exchange or otherwise handle Regulated Information.
- 23.2** Notwithstanding clause 23.1 the Supplier and

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

the Company must:

- (a) comply with all applicable Privacy Laws;
- (b) only use or disclose Personal Information for the purpose of fulfilling their obligations under this Purchase Order; and
- (c) protect Personal Information from misuse, interference and loss, unauthorised access, modification, or disclosure;

**23.3** In relation to Personal Information, the Supplier must:

- (a) not, without prior written consent from the Company:
  - (i) transfer or disclose any Personal Information outside Australia; or
  - (ii) allow any person outside Australia to access, view, or receive any Personal Information;
- (b) comply with all reasonable directions of the Company in connection with the security, use, disclosure, or handling of any Personal Information;
- (c) only make Personal Information available to Supplier Personnel to the minimum extent necessary to perform its obligations under this Purchase Order;
- (d) ensure that Supplier Personnel will manage the Personal Information consistently with Supplier's obligations under this Purchase Order;
- (e) as soon as reasonably practicable, provide the Company with the details of any complaint received by Supplier in connection with a breach or potential breach by Supplier or the Company of any Privacy Laws;
- (f) notify the Company that a disclosure of Personal Information is required by Law as soon as reasonably practicable upon becoming aware of it; and
- (g) unless the Purchase Order specifically requires it, and without limiting the Supplier's rights at Law, only contact the subjects of Regulated Information directly with the Company's prior written consent.

**23.4** The Supplier must notify the Company as reasonably practicable upon becoming aware of a breach of this clause 23.

#### **24. Access and correction requests**

**24.1** The Supplier must:

- (a) as soon as reasonably possible inform the Company in writing if it receives an access or correction request from an individual in connection with Regulated Information; and
- (b) comply with any reasonable and lawful

directions in respect of any such request, whether such direction is received by Supplier or the Company.

#### **25. Investigation**

**25.1** The Supplier must immediately notify and cooperate with the Company in respect of any actual or potential investigation by the OAIC (or an equivalent regulator of another jurisdiction) in relation to either party or their related bodies corporate in connection with this Purchase Order.

#### **26. Destruction of Personal Information**

**26.1** Without limiting anything else in this Purchase Order, once this Purchase Order expires or terminates for any reason, the Supplier must destroy all Personal Information.

**26.2** Notwithstanding clause 26.1, the Supplier may retain copies to the extent necessary to comply with any Law or internal corporate requirement.

#### **27. Suspected, likely or actual Data Breach**

**27.1** In relation to this Agreement, the Supplier must:

- (a) immediately report to the Company any Data Breach and the details of Personal Information impacted;
- (b) immediately investigate and take all reasonable steps to rectify, remedy, or mitigate such Data Breach and any harm to individuals;
- (c) provide the Company with details of the identity of any individuals or entities involved in the Data Breach;
- (d) provide details of the assessment that the Supplier is undertaking, or plans to undertake, to determine whether there are reasonable grounds to believe that a Data Breach has occurred; and
- (e) co-operate with all reasonable instructions of the Company in relation to that Data Breach.

#### **28. Eligible Data Breach**

**28.1** The Supplier must immediately upon becoming aware that there are reasonable grounds to believe there has been an Eligible Data Breach:

- (a) provide the following information to the Company, to the extent known:
  - (i) the basis upon which a reasonable person would or would not conclude that the incident would be likely to result in serious harm to any of the individuals subject to the Eligible Data Breach;
  - (ii) any remedial action Supplier has taken or proposes to take in relation to the incident;

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

(iii) proposed steps that the Supplier recommends the individuals subject to the Eligible Data Breach should take in response to the incident; and

(iv) details of the assessment undertaken by the Supplier undertake to assess whether the incident amounts to an Eligible Data Breach;

(collectively, the **Notifiable Matters**);

(b) provide the Company with all information, documents and assistance it reasonably requires in respect of the Eligible Data Breach and any notification requirements;

(c) provide the Company with ongoing updates (at least every two business days) with respect to the Notifiable Matters until such time as the Company determines that the incident has been remedied; and

(d) not notify OAIC or affected individuals of the incident unless first approved by the Company (acting reasonably).

## 29. SUPPLIER PROVIDED INFORMATION

**29.1** To the extent that Supplier-Provided Information is handled by the Supplier, and without limiting the Supplier's obligation to comply with Privacy Laws, the Supplier warrants that:

(a) Supplier-Provided Information is lawfully collected and made available to the Company; and

(b) it has and will continue to:

(i) obtain and maintain all necessary consents from the individuals to whom Supplier-Provided Information relates to allow the Company to handle the Personal Information; and

(ii) provide Necessary Notifications.

(c) Supplier indemnifies the Company against all loss, cost, expense or liability (including any regulatory fine or penalty imposed by a regulatory authority) brought, made or recovered against, or incurred or suffered by the Company in connection with any breach of clause 29.1(b) by the Supplier.

## 30. COMPLIANCE STATEMENT

**30.1** The Supplier must within 30 days of a request from the Company, provide the Company with a compliance statement, signed by two Directors and certifying the Supplier's compliance with clauses 23, 24, 25, 26, 27, 28 and 29

## 31. SURVIVAL

**31.1** The terms of clauses 16, 23, 24, 25, 26, 27, 28, 29 and 30 will survive the expiry or

termination of this Purchase Order.

## 32. No Waiver

**32.1** No party will be deemed to have waived any right under this Purchase Order unless the waiver is in writing and signed by that party. A failure to exercise, or delay in exercising, any right under this Purchase Order will not operate as a waiver of that right.

## 33. General

**33.1** The Supplier acknowledges that the Company is committed to providing Australian industry with full, fair and reasonable opportunities to perform work. The Supplier must use best endeavours to use Australian subcontractors, manufacturers or content in performing its obligations under the Purchase Order.

**33.2** There shall be no amendment, variation or modification of this Purchase Order, except by written agreement of each party.

**33.3** This Purchase Order may be executed by exchange of pdf copies sent by email and in any number of counterparts.



## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

## 35. Definitions

**Authority** means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body (including without limitation the Foreign Investment Review Board), as applicable, in Australia, New Zealand or any other relevant jurisdiction.

**Background IP** means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Purchase Order.

**Bulk Customer Data** means data about multiple parties that receive or consume products (goods or services) whether or not they are an existing, past or potential customer of the Company, or any of its Related Bodies Corporate.

**Bulk Personal Information** means any holdings or files of Personal Information about multiple individuals, being more than 100 records, other than data that is directly related to a current or former employment relationship between the Company and an individual, and an employee record held by the Company and relating to an individual.

**Company** means the entity named as such in the Purchase Order.

**Company Contact** means the person specified as such on the Purchase Order.

**Confidential Information** means the terms of this Purchase Order and the Company's information made available to the Supplier at any time in connection with this Purchase Order and the Goods and/or the Services, together with any information that concerns the business, operations, finances, plans or customers of the Company (or its Related Bodies Corporate) disclosed to or acquired by the Supplier (including any information that is derived from such information), but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Purchase Order;
- (b) is in the Supplier's possession without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or
- (c) has been independently developed by the Supplier or acquired from a source which was not subject to a duty of confidentiality to the Company.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Data Breach** means any suspected, likely, or actual unauthorised access to, any disclosure of or loss of Personal Information.

**Delivery Date** means the date(s) specified in the Purchase Order by which the Supplier must supply the Goods at the Delivery Address.

**Delivery Address** means the place for the delivery of the Goods specified as such on the Purchase Order.

**Due Date** means the date(s) by which the Supplier must perform the Services as agreed between the parties in writing.

**Electricity or Gas Data** means data as to the quantum of gas and/or electricity delivered (both historical and current load demand) from or to any one or more sites (or their connection points).

**Eligible Data Breach** has the meaning given to that term in the Privacy Act.

**Existing Plant** means plant or equipment of the Company not supplied by the Supplier under this Purchase Order.

**FIRB Restricted Data** means any Bulk Personal Information, Bulk Customer Data and Electricity or Gas Data.

**Good Industry Practice** means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a diligent, skilled, well resourced and experienced provider of goods and/or services of the type supplied under this Purchase Order.

**Goods** means the goods, if any, required to be provided by the Supplier under this Purchase Order (including any parts of the goods specified) and including goods or parts supplied as part of the supply of any Service.

**GST** has the meaning given in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Indirect Loss** means any loss that does not arise naturally and according to the usual course of things as a result of a breach of the Purchase Order or other event giving rise to the loss, whether or not such loss may reasonably be supposed to have been in the contemplation of both parties, at the time they entered into the Purchase Order, as the probable result of the breach or other event.

**Intellectual Property Rights** means all intellectual property rights, including copyright, trademarks, patents, designs, circuit layout rights, the right to protect confidential information and any application or right to apply for registration of any of those rights.

**Law** means all legislation, including regulations, by-laws, orders, awards, codes of

## ALINTA ENERGY PURCHASE ORDER TERMS AND CONDITIONS GOODS AND/OR SERVICES

practice and proclamations with which a party is legally required to comply, whether in effect now or in the future, together with all Authority requirements, guidelines, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a party is legally required to comply.

**Loss** includes any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**OAIC** means the Office of the Australian Information Commissioner.

**Personal Information** has the meaning given to that term in the Privacy Act.

**Personnel** means directors, employees, agents, officers, secondees, contractors or subcontractors.

**Plant** means any plant, structure or equipment.

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

**Price** means the price or rates specified as such in the Purchase Order.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Law** means any Law that applies to either or both of the parties, Australian or otherwise, and as amended from time to time, which affects privacy, data protection or any Personal Information (including its collection, storage, use or processing), including without limitation:

- (a) the Privacy Act 1988 (Cth) and SPAM Act 2003 (Cth);
- (b) the Spam Act 2003 (Cth); and
- (c) any codes of conduct, directives, principles or orders made under the legislation referred to in (a) or (b) above.

**Purchase Order** means the agreement comprising these Purchase Order Terms and Conditions, the Purchase Order form (including any Specification) and any schedules or documents annexed to the Purchase Order form and/or these Purchase Order Terms and Conditions, by the Company.

**Regulated Information** means all Personal Information which the Supplier receives or has access to under, for the purpose of or in the course of carrying out its obligations under, this Purchase Order.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Services** means services, if any, to be provided by the Supplier (including any ancillary services) to perform its obligations under this Purchase Order.

**Site** means the place where the Services are to be performed as agreed between the parties in writing.

**Standards and Procedures** means all of the Company's standards, policies, and procedures that apply, including any Site provisions and Supplier Code of Conduct, as provided to the Supplier from time to time.

**Specification** means the detailed requirements and specifications for the Goods and/or Services, and their delivery and/or performance, as set out in the Purchase Order, or as otherwise agreed in writing between the parties from time to time.

**Supplier** means the party or parties named as such in the Purchase Order.

**Supplier-Provided Information** means all Personal Information which the Company receives from the Supplier or has access to under, or for the purpose of or in the course of carrying out its obligations under, this Purchase Order.

**Tax** includes all present or future taxes, fees, levies, duties, imposts, assessment, royalties, tariffs, fees and charges imposed or assessed in respect of this Purchase Order by all Authorities including income tax, payroll tax, statutory pension or superannuation contributions and workers compensation payments and contributions, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but does not include GST.

## 36. Interpretation

- 36.1 In this Purchase Order, unless the context otherwise requires:
- 36.2 headings are for ease of reference only and will not affect the interpretation
- 36.3 references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust or unincorporated body of persons.
- 36.4 references to any party to this Purchase Order include that party's successors and permitted assigns.
- 36.5 references to the singular include the plural and vice versa.
- 36.6 references to clauses are to clauses in these Purchase Order Terms and Conditions.
- 36.7 the interpretation of a provision of this Purchase Order shall not be affected or influenced by the party who drafted or

proposed it.

- 36.8** reference to a “day”, “month” or “year” shall mean, respectively, a calendar day, calendar month and calendar year.
- 36.9** any references to the term “includes”, “including” or any similar derivatives shall not imply any limitations.
- 36.10** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.