

1. AGREEMENT

- 1.1 This document sets out Energy Conservation Solutions' (ECS's) terms for providing the goods (including software) and/or services (**Goods and Services**) to you (**Client**). This agreement applies to any provision of Goods and/or Services by ECS to Client.
- 1.2 This agreement will commence upon the date the first purchase order is submitted by you and accepted by ECS or upon the date the first Goods and Services are shipped or provided by ECS to you whichever is the earlier date.
- 1.3 This agreement applies to the provision of the Goods and Services to the exclusion of any other terms.
- 1.4 ECS may, in its sole discretion, assign or novate any or all of its rights and obligations under this Contract to a related body corporate and Client irrevocably consents to such assignment or novation.

2. PROVISION OF GOODS AND/OR SERVICES

- 2.1 Client acknowledges that times or dates identified by ECS for the provision of the Services and the delivery of the Goods are estimates only and ECS will not be liable for any delays.
- 2.2 Any drawings, specifications and plans identified by ECS as requiring Client's approval will be approved or commented on in writing by Client within five (5) working days after the receipt of such drawings, specifications or plans. If Client does not respond within that period (or such other period identified by ECS), it will be deemed to have approved the drawings, specifications or plans, as the case may be.
- 2.3 Unless otherwise agreed in writing, Client must satisfy itself that Goods are suitable for any purpose other than those described in the documentation provided by ECS for those Goods.
- 2.4 Subject to clause 2.5 all Goods provided by ECS will be dispatched or made available for collection at ECS' warehouse.
- 2.5 ECS may, if requested by Client in its purchase order and at Client's expense, deliver the Goods to a specified delivery location (Site). Such expense referred to herein shall be included in the Price as defined in clause 4.

3. SITE PREPARATION

- 3.1 If Goods are to be delivered to Site pursuant to clause 2.5, Client must at its cost prepare the Site to which Goods or Services are to be provided and provide ECS with reasonable access to the Site and other facilities (including adequate power, telephone, facsimile, email and office space, if requested by ECS) to allow ECS to perform its obligations under this agreement.
- 3.2 If ECS is delayed in providing any Goods or Services due to failure of Client to prepare the Site or provide information: (i) Client will be liable to ECS for all costs and expenses incurred by ECS directly or indirectly as a result of such delay; and (ii) the time for performance of ECS's obligations under this agreement will be extended by the amount of any such delay.

4. PRICE AND PAYMENT

- 4.1 Client must pay the price identified by ECS for the Goods and/or Services (Price) in accordance with the timetable for payment of the Price identified by ECS (Payment Schedule). If there is no Payment Schedule or other terms of payment identified by ECS, Client must pay the Price as invoiced by ECS within 30 days from the date of issue of an invoice. If Client fails to pay any sum due under this agreement by the due date, Client must pay interest of 2% per month on that sum from the due date until the date of payment. Interest is to be calculated on a daily basis.

5. RISK AND TITLE

- 5.1 Risk of any loss or damage to Goods passes to Client at the time of dispatch or, if delivered by ECS, on arrival to Site and title in each item of Goods remains with ECS until the amount owed by Client to ECS for that item of Goods has been paid in full.
- 5.2 Title to and property in the Goods will not pass until Client has paid all money owed to ECS on any account whatsoever. Payment shall not be taken to occur until all cheques tendered in discharge of sums owing to ECS have been presented and cleared in full.
- 5.3 If Client does not pay for any Goods on the due date for payment, Client authorises ECS, its employees and agents to enter any location where the Goods are located, to retake possession of the Goods without liability for trespass or damage.

- 5.4 Until Client has paid all monies owed to ECS on any account whatsoever, the relationship of Client to ECS will be as a fiduciary in respect of the Goods and accordingly: (i) Client must store the Goods in such a way that they can be recognised as the property of ECS; (ii) upon resale of the Goods by Client, ECS shall have the right to trace the full proceeds of sale; and (iii) Client shall account immediately to ECS for such proceeds of sale and ECS may recover from such proceeds of sale any money then owing to ECS on any account whatsoever.

6. INTELLECTUAL PROPERTY

- 6.1 ECS remains the owner of any intellectual property rights created in connection with the provision of the Goods and Services.
- 6.2 ECS grants to Client a permanent, irrevocable, non-transferable licence to use any intellectual property rights created in connection with the provision of the Goods and Services strictly for the purposes contemplated in the documentation provided by ECS together with and for such Goods and Services. This licence is subject to any other purpose identified by ECS and payment of the Price, and all other monies owed by Client to ECS, in full.
- 6.3 If ECS provides Client with any proprietary software, Client acknowledges and agrees that the licence agreement, in the case of Energy Conservation Solutions Pty Ltd software and the terms provided with any third party software or otherwise by Energy Conservation Solutions Pty Ltd, will apply to the licensing of the software.

7. WARRANTIES

- 7.1 Client's use of Goods, other than in accordance with the manufacturer's specifications for the Goods, is at Client's sole risk.
- 7.2 Client agrees that any warranty on any Goods that are not ECS's proprietary goods is limited to the warranty given by the manufacturer of those Goods and, to the maximum extent permitted by law, ECS gives no additional warranties in relation to any third party Goods.
- 7.3 ECS warrants that the Services will be executed using due care and skill.
- 7.4 A 90 day defects liability period for the Services starts from the earlier of completion of the site acceptance test, operational use of the system or function that was implemented in the Services or the date on which the system is utilised by Client for its intended purpose commences, unless otherwise agreed in writing.
- 7.5 A 1 year defects liability period for proprietary ECS goods starts from delivery, unless otherwise expressly agreed in writing.
- 7.6 ECS's obligations under clauses 7.4 and 7.5 do not apply if the defect arises out of any alteration to or modification of proprietary ECS Goods, that is made by Client or any other person without ECS's prior written consent.
- 7.7 Except for those terms that cannot by law be excluded, all other terms that might be implied into this agreement are excluded.

8. GOODS RETURNED FOR CREDIT AND CANCELLATION

- 8.1 Return of Goods and cancellations of Goods and Services is only permitted by ECS in accordance with its policies from time to time (available on request) for returns and cancellations.
- 8.2 If the Client cancels or suspends any order of undelivered Goods without ECS's prior written consent, ECS is entitled to charge the following cancellation fees: (a) where the Goods are listed in ECS's current Australian catalogue or price list for the time being as stock items, a cancellation fee of 25% of the Price; or (b) where the Goods are listed in ECS's current Australian catalogue or price list for the time being as non-stock items, a cancellation fee of 100% of the Price; or (c) where the Goods are not listed in ECS's current Australian catalogue or price list for the time being, a cancellation fee of 100% of the Price. (d) Where the Goods are manufactured by ECS, ECS is entitled to liquidated damages assessed as follows: i) all cancellation costs associated with the return of Goods to suppliers; and ii) where manufacture of the equipment has commenced, all direct labour cost associated with work performed to date and the associated labour cost to dismantle components which are to be returned to suppliers; and iii) a charge of 25 % of contract value for recovery of administration and design costs, overhead recovery and loss of profit.

9. CONFIDENTIAL INFORMATION AND PUBLICITY

- 9.1 Each party agrees that all non-public or proprietary information relating to the business, technology or affairs of the other provided or disclosed under this agreement or during the preceding negotiations is confidential.
- 9.2 Except as required by law, neither party will use or disclose such confidential information to any third party without the prior written consent of the other.
- 9.3 Unless required by any legislation, rules of a stock exchange or other government regulation, no public announcement concerning this will be made without the prior consent of both parties.

10. DRAWINGS AND DOCUMENTATION

- 10.1 Client acknowledges that any drawings, specifications and plans provided to Client by ECS and any statement, description, illustration or other information in ECS's catalogues, websites, price lists and other advertising matter are intended merely to give a general idea of the Goods and/or Services and will not, unless otherwise agreed in writing, form any part of this agreement.
- 10.3 ECS may, if requested by Client and at Client's expense, provide Client with certified drawings.
- 10.4 Client acknowledges that any drawings, specifications and plans provided to Client by ECS remain the property of ECS and constitute the confidential information of ECS and that Client must not use them for any purpose other than in accordance with these terms nor disclose them to third parties.
- 10.5 If a tender, proposal or quotation is not completed, Client must return to ECS any studies, drawings or other documents submitted with ECS's offer within 14 days of ECS's request for such documentation/information.
- 10.6 Any performance figures stated in a tender, proposal or quotation are subject to the recognised tolerance and rejection limits applicable to those figures.

11. INSURANCE

- 11.1 ECS is covered by public and products liability insurance.

12. LIMITATION OF LIABILITY AND INDEMNITY

- 12.1 Notwithstanding any other term of this agreement, ECS's total liability under this agreement whether in contract, tort (including negligence) or otherwise, is limited to an amount equal to the Price or the maximum Insurance coverage, whichever is the lesser.
- 12.2 To the extent that terms implied by law apply to the Goods or Services, ECS's liability for any breach of those terms is limited to either (i) re-supplying the Goods or Services; (ii) repairing or replacing the Goods; or (iii) paying the costs of re-supply of the Services or the costs of re-supply or repair of the Goods.
- 12.3 Notwithstanding any other term of the agreement, ECS is not liable whether in contract, tort (including negligence) or otherwise for any loss of profit, consequential damage or loss (including, without limitation, loss of market, data, opportunity or contracts) whether to people or property arising directly or indirectly pursuant to this agreement or the performance of the Services or supplying of Goods under this agreement.
- 12.4 Notwithstanding any other term of this agreement, ECS's liability for any loss or damage arising as a consequence of a breach of this agreement is reduced proportionally to the extent the act or omission (deliberate or negligent) of Client or any person (other than ECS, its employees, agents or subcontractors) contributed to the loss or damage incurred.
- 12.5 ECS will not be liable for damage or loss that is the consequence of: (i) incorrect or incomplete information supplied by Client; (ii) operational cessation; (iii) loss of data (Client must ensure that back-ups are made of programs and files and copies of other data that are made available by Client to ECS); (iv) any shortcoming of Client in the performance of its obligations including the granting of full assistance in implementing this agreement; or (v) any use by Client of Goods other than in accordance with the documentation provided by ECS together with and for such Goods, except to the extent that ECS expressly approves in writing such use.

- 12.6 Where damage or loss occurs as contemplated in clause 12.4 and such damage or loss leads to any claim by a third-party, Client indemnifies ECS against any such claim.

- 12.7 No claim may be brought against ECS where Client has the possibility in respect of the cause of the damage to claim directly against a third-party (a supplier of ECS) or its insurer.

13. FORCE MAJEURE

- 13.1 A party will not be liable to the other if performance of its obligations to the other party is delayed, impeded or prevented by any act or event beyond the control of a party, whether foreseen or not, which delays, interrupts or prevents such party from performing its obligations under this agreement (Force Majeure).
- 13.2 If delay in the performance of this agreement due to Force Majeure continues for more than 1 month, a party may terminate this agreement by notice to the other. In such event, termination shall have the same meaning as cancellation and the terms of Clause 8.2 shall apply unless expressly agreed by ECS in writing.

14. SUSPENSION AND TERMINATION

- 14.1 If Client fails to pay any sum due under this agreement by the due date, ECS may by notice, in addition to its other rights under this agreement, suspend providing the Goods and Services, until all overdue amounts are paid.
- 14.2 A party may terminate this agreement by providing notice to the other party in any of following events or circumstances (i) if the other party is in breach of any of the terms of this agreement which is capable of remedy and fails to rectify the breach within thirty (30) days of the receipt of a notice from the first party requesting such rectification; (ii) if the other party is in breach of any of the terms of this agreement which is not capable of remedy; (iii) if the other party passes a resolution for winding up or liquidation (except for the purpose of reconstruction or amalgamation); (iv) if a receiver and/or manager is appointed in respect of any property or assets of the other party; (v) if the other party enters into any scheme of arrangement for the benefit of creditors; or (vi) if any petition is presented to wind up the other party.

15. MISCELLANEOUS

- 15.1 Client may request variations to this agreement in writing.
- 15.2 ECS will have no obligation to accept such variations. If the parties agree to a variation they will both execute a document that specifies the agreed variations to ECS's obligations and any changes to the Price, the Goods and Services and the Payment Schedule.
- 15.3 Client must not, during the term of and for 6 months after termination of this agreement, solicit or engage ECS's employees, agents or contractors that have been employed or engaged in relation to the Goods and Services.
- 15.4 Nothing contained or implied in this agreement will create a relationship of partnership or agency between the parties.
- 15.5 Neither party has any authority to bind the other party to any obligation.
- 15.6 Each and every obligation contained in this agreement will be treated as a separate obligation and will be severally enforceable notwithstanding the non-enforceability of any other such obligation.
- 15.7 In this agreement, a reference to a thing is a reference to the whole thing and to any part of the thing.
- 15.8 This agreement and all aspects of ECS's engagement and performance of the Services are governed by, and construed in accordance with the laws applicable in the State of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.