

UCS GROUP

TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND/OR SERVICES

1. Preliminary

These terms and conditions apply to the purchase order (**Purchase Order**) that refers to these terms and conditions or contains a link through which these terms and conditions may be accessed.

transfer, use or possession, easement or subordination to a right of a person or an adverse or competing interest of another person.

practices and to a standard reasonably expected of a highly skilled, competent and experienced contractor who provides services of a similar nature to the Services;

2. Purchase Order

The Purchase Order is an offer by the UCS Entity (**UCS**) named in the Purchase Order to the vendor (**Vendor**) named in the Purchase Order to acquire the goods (**Goods**) and/or services (**Services**) described in the Purchase Order from the Vendor in accordance with the Purchase Order and these terms and conditions. UCS may at any time withdraw the Purchase Order (orally or in writing) before it is accepted by the Vendor. The Purchase Order is only accepted when the Vendor gives to UCS written notice of acceptance of the Purchase Order or by any other means accepted by UCS. The Purchase Order is automatically withdrawn if the Vendor has not accepted it within 30 days from the date of the Purchase Order. If the Vendor tells UCS orally that it accepts the Purchase Order and UCS agrees to this form of acceptance, the Vendor must as soon as reasonably practicable confirm its acceptance in writing. If the Vendor accepts the Purchase Order before it is withdrawn, a binding agreement (**Contract**) between UCS and the Vendor will arise under which the Vendor agrees to supply to UCS, and UCS agrees to acquire from the Vendor, the Goods and/or Services (**Deliverables**) in accordance with the Purchase Order and these terms and conditions.

- (b) On delivery to UCS, the Goods will be new, free from defects, of merchantable quality, fit for their intended purpose, in appropriate packaging, in compliance with all relevant standards and legal requirements and in conformity with the size, weight, grade, colour and/or other specifications and description of the Goods set out in the Purchase Order or any brochure, sales literature or other materials or representations published or provided by the Vendor (or manufacturer of the Goods) or any plans or other documents provided by UCS before the date of the Purchase Order and, where the Goods are for on-supply to an entity in connection with the generation, transmission, distribution or supply of electricity or gas, in accordance with the technical specifications required by the entity.
- (c) Where a particular brand is not specified in the Purchase Order, the Goods will be of a quality and type appropriate for the intended use of the Goods.

- (c) with due care and skill;
- (d) so that the intellectual property rights of a third party are not breached either by the provision of the Services or the use of the product or result or use of any Services as intended; and
- (e) in compliance with all laws, regulations, by-laws, regulatory approvals (including, without limitation, building permits and planning approvals), policies, guidelines and requirements of a government agency relating to privacy, and industry codes and standards applicable to the Services or site at which the Services are to be performed or otherwise provided and, where the Services are provided for, or in connection with infrastructure, facilities or services of, an entity involved in the generation, transmission, distribution or supply of electricity or gas, in compliance with any standards or other requirements imposed by the entity generally or specifically in relation to the Services.

3. Supply

The Vendor must supply the Deliverables:

- (a) to or at the 'ship to' address between 7:00 and 2:00 pm on a business day; and
- (b) by the 'requested delivery' date;

set out in the Purchase Order.

Where factory testing is specified in the Purchase Order as required, the Vendor must factory test the Goods before they are delivered to UCS to confirm that the Goods meet the published specifications for the Goods and otherwise satisfy the warranties in clause 4.1(b), provide to UCS the results of the factory testing at or before delivery, and only deliver to UCS the Goods which have been factory tested and the test results for which show the Goods meet the published specifications for the Goods and otherwise satisfy the warranties in clause 4.1(b).

5. Remedies

If there is a breach of any of the representations and warranties in clause 4 in respect of any Deliverables or if any Deliverables are defective or otherwise not compliant with the Contract and UCS notifies the Vendor of this within 12 months from the date the Deliverables are supplied to UCS:

- (a) where the Deliverables are or include Goods, either:
 - (1) UCS may repair or convert the Goods into a condition compliant with the Contract, in which case the Vendor must reimburse UCS its reasonable costs of doing so promptly after receiving written notice of those costs; or
 - (2) UCS may require the Vendor to replace the Goods, in which

4. Warranties

4.1 Goods

Where the Deliverables comprise or include Goods, the Vendor represents and warrants to UCS as follows:

- (a) The Vendor is the legal and beneficial owner of the Goods, and the Goods are sold, and title to them will pass, to UCS free from any encumbrance or security interest including, without limitation, a mortgage, charge, pledge, lien, conditional sale agreement, hire or hire purchase agreement, option, restriction as to

4.2 Services

Where the Deliverables comprise or include Services, the Vendor represents and warrants to UCS that the Services will be performed or otherwise provided by the Vendor:

- (a) so that when provision of the Services is completed the product or result will be of high quality, free from defects and suitable and able to be used for the purposes for which it is intended;
- (b) in a proper and tradesmanlike manner using best industry

case the Vendor must, as soon as reasonably practicable and in any case within 14 days from the date UCS notifies the Vendor that it requires the Goods to be replaced, deliver to UCS replacement goods compliant with the Contract to the ship to address set out in the Purchase Order (or such other address as UCS may notify the Vendor) and the representations and warranties by the Vendor under the Contract will apply to these replacement goods, and UCS must make available for collection by the Vendor the Goods that are to be replaced when the replacement goods are delivered to UCS; and

(b) where the Deliverables are or include Services, either:

(1) UCS may perform or otherwise provide services, or have services performed or otherwise provided by others to redress the breach or defective or otherwise non-compliant Services, in which case the Vendor must reimburse UCS its reasonable costs of doing so promptly after receiving written notice of those costs; or

(2) UCS may require the Vendor to perform or otherwise provide the Services again, in which case the Vendor

must, as soon as reasonably practicable and in any case within 14 days from the date UCS notifies the Vendor that it requires the Services to be provided again, provide to UCS replacement services compliant with the Contract at the 'ship to' address set out in the Purchase Order (or such other address as UCS may notify the Vendor) and the representations and warranties by the Vendor under the Contract will apply to these replacement services.

The foregoing does not limit UCS's rights and remedies under any other provision of the Contract.

Where the Deliverables comprise or include Goods, the Vendor must ensure that all warranties and guarantees given by the manufacturer or other supplier of any of the Goods, and agrees that the representations and warranties and the Vendor's other obligations under clause 4 and this clause 5, are given for the benefit of, and may be relied on by, UCS and any person acquiring the Goods through or from UCS.

6. Title

Title to any Deliverables (being Goods or the product or result of performing or otherwise providing any Services) passes to UCS (or any person acquiring the Deliverables through or from UCS) on the date the Deliverables are supplied to UCS or the date UCS pays for the Deliverables, whichever occurs first.

7. Risk

The Vendor is responsible for the care and security of the Deliverables (being Goods or the product or result of performing or otherwise providing any Services), and assumes the risk of (and must make good) any loss or destruction of or damage to any of the Deliverables (except to the extent caused by a wrongful act of UCS), until the Deliverables are delivered into the safe keeping of UCS in accordance with the Contract and, in the case of the product or result of performing or otherwise providing any Services, the Services have been performed or otherwise provided in accordance with the Contract, and after such supply UCS bears the risk of any loss of or damage to the supplied Deliverables

(except to the extent caused by a wrongful act of the Vendor).

8. Payment

After supply of all of the Deliverables to UCS that are required to be supplied by a particular delivery date, the Vendor may prepare and give to UCS a tax invoice for the price set opposite the description of those Deliverables in the Purchase Order (**Purchase Price**). The tax invoice must contain sufficient detail for UCS to verify the amount payable and quote the Purchase Order number and related Project number and must be sent by email to accountspayable@ucs.com.au. UCS must pay the Purchase Price of Deliverables that have been supplied to it within 61 days from the end of the month in which the tax invoice for the Purchase Price is given by the Vendor to UCS in accordance with this clause 8 or the date of supply of the Deliverables, whichever is later. The total price payable for any Deliverables includes GST.

9. Time limit

After the end of 12 months from the date of supply of the Deliverables to UCS (**Final Payment Claim Period**):

- (a) the Vendor may not deliver an invoice for or make any other claim for payment for any of the Deliverables; and
- (b) UCS has no further liability to the Vendor in relation to any of the Deliverables;

except in relation to any unpaid amount in respect of the Deliverables invoiced by the Vendor in accordance with the Contract before the end of the Final Payment Claim Period.

10. Indemnity

The Vendor indemnifies UCS and its related bodies corporate and the officers, employees, agents and contractors of any of them against any loss, cost or other liability arising out of or in connection with a breach by the Vendor of the Contract or the supply or failure to supply any Deliverables or the use or application of any Deliverables by UCS (or any person acquiring the Deliverables through or from UCS) or any infringement through the supply or use of any Deliverables of any patent, trademark, copyright, design or other intellectual property of any person, except to the extent caused by a wrongful act of UCS. Even though not a party to the Contract, a person will be entitled to the benefit of the indemnity given in its favour by the Vendor under this clause 10, and the indemnity may be enforced on its behalf by UCS. This indemnity does not apply to any loss, cost or other liability to the extent it arises due to failure of UCS or any other person seeking the benefit of the indemnity not taking reasonable steps to

mitigate the loss, cost or other liability.

11. Termination

Termination by UCS

If:

- (a) the Vendor commits a breach of the Contract which is capable of remedy, and fails to remedy the breach within 7 days from receipt of written notice of default from UCS (and the parties agree that failure to perform an obligation by a particular time is a breach capable of remedy);
- (b) the Vendor commits a material breach of the Contract which is not capable of remedy; or
- (c) the Vendor is dissolved, wound up or placed into bankruptcy, or an order is made by a court or an application is made to a court for an order or a resolution is passed or the Vendor gives notice of its intention that the Vendor be dissolved, wound up or placed into bankruptcy, a controller or administrator is appointed in respect of the Vendor or any property of the Vendor or takes possession or gains control of any property of the Vendor, the Vendor (except to reconstruct or amalgamate while solvent) enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them, the Vendor is (or states that it is) insolvent or an insolvent under administration or the Vendor takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;

UCS may terminate the Contract at any time by giving to the Vendor written notice of termination **provided that** UCS may not terminate because of an event referred to in paragraph (c) above if prevented by law from doing so. Termination will be effective on the date of termination stated in the notice, or if no date is stated, on the date the termination notice is given to the Vendor.

Termination by Vendor

If:

- (a) UCS commits a breach of the Contract and fails to remedy the breach within 7 days from receipt of written notice of default from the Vendor; or
- (b) UCS is dissolved, wound up or placed into bankruptcy or an order is made by a court or an application is made to a court for an order or a resolution is passed or UCS gives notice of its intention that UCS be dissolved, wound up or placed into bankruptcy, a controller or administrator is appointed in respect of UCS or any property of UCS or takes possession or gains control of any property of UCS, UCS (except to reconstruct or amalgamate while solvent) enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them, UCS is (or states that it is) insolvent or an insolvent under administration or UCS takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;

the Vendor may terminate the Contract at any time by giving to UCS written notice of termination **provided that** the Vendor may not terminate because of an event referred to in paragraph (b) above if prevented by law from doing so. Termination will be effective on the date of termination stated in the notice, or if no date is stated, on the date the termination notice is given to UCS.

Effect of termination

Termination of the Contract will not prejudice or otherwise affect any rights and obligations of the parties expressed in the Contract or intended to survive termination of the Contract, nor will it prejudice or otherwise affect any right or remedy one party has against another party in respect of any breach of the Contract before termination, but termination of the Contract will terminate all other rights and obligations of the parties under the Contract. This clause 11 and clauses 4, 5, 10 and 13 survive termination of the Contract.

12. Further assurances

Each party must, at its own expense, do everything reasonably necessary to give effect to the Contract and the transactions contemplated by it, including without limitation the execution of documents.

13. Governing law and jurisdiction

The Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

14. Amendment

The parties may only amend the Contract if each party signs the written amendment.

15. Remedies cumulative

The rights and remedies provided in the Contract are cumulative with and not exclusive of the rights and remedies provided by law independently of the Contract.

16. Continuing indemnities

Each indemnity in the Contract is:

- (a) a continuing obligation despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity has been paid in full;
- (b) is additional, separate and independent from the obligations of the parties; and
- (c) survives termination of the Contract.

It is not necessary for a person to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

17. Assignment

The Contract is for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by the Contract. A party may only assign its rights under the Contract after it obtains the written consent of the other party.

18. Severance

If any provision of the Contract is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

19.	<p>Entire agreement</p> <p>The terms of the Contract comprise the terms set out in the Purchase Order and these terms and conditions, and they supersede, replace and override all other communications and discussions between the parties and other terms provided by one party to another prior to the Vendor's acceptance of the Purchase Order. Without limiting the generality of the foregoing, no additional term set out or implied in any quotation from the Vendor or the Vendor's acceptance of the Purchase Order will apply or have any effect unless expressly agreed to in writing by UCS.</p>	(c)	an agreement or obligation on the part of 2 or more persons binds them jointly and severally;	(3)	Sustainable Asset Co Pty Ltd ABN 60 660 232 655;
		(d)	a reference to Deliverables includes any replacement goods and/or services supplied or required to be supplied by the Vendor under clause 5;	(4)	UCS Group Pty Ltd ABN 73 607 613 936;
		(e)	a reference to Services includes the product or result of performing or otherwise providing the Services;	(5)	UCS Group (NSW) Pty Ltd ABN 48 661 870 891;
		(f)	a reference to supply in relation to Goods is a reference to the sale and delivery of the Goods and in relation to Services is a reference to the performance or other provision of the Services;	(6)	UCS Group (QLD) Pty Ltd ABN 62 652 163 892;
20.	<p>Relationship</p> <p>Nothing in the Contract constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably except as expressly stated in the Contract.</p>			(7)	UCS Group (SA) Pty Ltd ABN 34 656 005 980;
		(g)	a reference to a wrongful act of a party is a reference to:	(8)	UCS Infrastructure Pty Ltd ABN 88 630 697 826;
21.	<p>Notices</p> <p>A party may send a notice in connection with the Contract by hand delivery, pre-paid post or email to another party at its address details set out in the Purchase Order or in such other way as the recipient party may have last notified each other party in writing. A notice is deemed to be received:</p>			(9)	UCS Overhead Services Pty Ltd ABN 81 647 350 963;
	(a) if sent by hand delivery, at the time of delivery if on a business day at or before 5:30 pm, otherwise on the next business day;	(1)	any breach of the Contract by the party; or	(10)	UCS Signals Pty Ltd ABN 56 007 417 101;
	(b) if sent by pre-paid post, on the second business day after the date of posting; or	(2)	any negligent, reckless or dishonest act or omission of the party or any officer, employee or agent of the party or any other person for whom the party may be vicariously liable for the act or omission which gives rise to a common law or statutory cause of action (but does not include an act or omission of the other party or any officer, employee or agent of the other party or any other person for whom the other party may be vicariously liable for the act or omission);	(11)	UCS Sustainability Pty Ltd ABN 52 632 997 230;
	(c) if sent by email, at the time of sending if on a business day at or before 5:30 pm, otherwise on the next business day, provided that the sender does not receive a subsequent 'Out of Office' reply or similar response or a system administrator message stating that the email did not reach its intended recipient.			(12)	UCS Sustainable Energy Solutions Pty Ltd ABN 54 626 277 450;
				(13)	UCS Telecommunications Pty Ltd ABN 23 626 277 316;
				(14)	Underground Cable Systems Pty Ltd ABN 63 069 485 990; or
				(15)	URD Products Pty Ltd ABN 78 628 780 085;
22.	<p>Interpretation</p> <p>In these terms and conditions and the Purchase Order headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires:</p>			(i)	a word or term defined in the <i>Corporations Act 2001</i> (Cth) has the same meaning; and
	(a) a reference to a word includes the singular and the plural of the word and vice versa and a reference to a gender includes any gender;	(h)	a reference to a UCS Entity is a reference to:	(j)	a word or term defined in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) has the same meaning where used in connection with the GST imposed under that Act.
	(b) no provision of the Contract will be construed adversely to a party solely on the ground that the party was responsible for its preparation;	(1)	ASENO Pty Ltd ABN 62 660 232 664;		
		(2)	Australian Sustainable Embedded Network Operation Pty Ltd ABN 64 660 232 673;		