

# TERMS OF SUPPLY

## 1. Definitions

“**Agreement**” means the agreement (whether written or oral) between SCE and the Client for the provision of the Services which agreement includes these Terms and any other documents provided by SCE relating to the Services ;

“**Authorised Representative**” means the representative nominated in writing by each Party who is authorised by that Party to give and receive instructions and directions with respect to the Agreement.

“**Client**” shall mean the person or entity to whom SCE is providing the Services.

“**Fees**” means the fees payable by the Client to SCE for the provision of the Services.

“**Hourly Fees**” means SCE’s hourly charge rate for additional services.

“**SCE**” means South Central Electrical (ABN 54 656 372 881) its successors and assigns;

“**Party**” means a party to the Agreement and “**Parties**” shall have a corresponding meaning;

“**Services**” means the Services as described in any written agreement between the Parties, invoices, quotation, work authorisation or any other work commencement forms as provided by SCE to the Client and any other services agreed to by the Parties in writing excluding any services which SCE advises are excluded from the Services.

“**Terms**” means the terms and conditions contained in this document.

## 2. Acceptance

- Any instructions received by SCE from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by SCE shall constitute acceptance of the Terms.
- These Terms shall apply to all future supplies of Services from SCE to the Client unless expressly excluded in writing by the Parties.

2.3 Where more than one Client has entered into this agreement, the clients shall be jointly and severally liable for payment of the Fees and the compliance with all other obligations under the Agreement.

## 3. Services

- SCE shall ensure the Services are performed by an employee/s or consultant/s of SCE with due care, diligence who has the relevant skill reasonably expected of an experienced professional providing the Services.
- SCE shall determine in its absolute discretion which of its employees and/or consultants will provide the Services (and there may be more than one employee and/or consultant) and may replace an employee or consultant at any time.

## 4. Fees and Payment

4.1 The Client must pay to SCE the Fees (without deduction or off set) for the Services in accordance with any written agreement between the Parties concerning the Services and in the absence of such written agreement then in the manner and at the time as indicated on invoices provided by SCE to the Client in respect of Services supplied from time to time.

4.2 The Fees are exclusive of GST and the Client is responsible for the payment of any GST applicable in respect of the provision of the Services in addition to any other amounts payable in accordance with these Terms.

## **5. Additional Services**

- The Client may request that SCE performs additional services outside the scope of the Services. If this occurs the Client may request that SCE communicate with the Client regarding the scope and estimated cost of these additional services.
- All requests for additional services must be in writing and must be made by an Authorised Representative of the Client to an Authorised Representative of SCE.
- If the Client does not request an estimate, SCE may at its discretion provide its services to the Client on a time and materials basis at the Hourly Fees.
- Agreements for additional services may necessitate that SCE issue a new written agreement to reflect the obligations of both Parties.

## **6. Purchasing goods on Behalf of Client**

6.1 Where SCE is required to purchase products or equipment ("goods") on behalf of the Client in order to carry out the Services or where SCE agrees to do so at the request of the Client, SCE may, in its absolute discretion:

- (a) require prior upfront payment for the goods from the Client or;
- (b) invoice the Client for the goods,

provided that the Client has approved any costs, prior to them being incurred by SCE.

6.2 If SCE invoices the Client for goods then payment of the invoice must be made on the due date for payment nominated on the invoice.

6.3 Ownership and title to the goods purchased by SCE on behalf of the Client shall remain with SCE until they have been paid for in full.

6.4 The Client must not sell, lease, licence or otherwise encumber the goods until title passes to the Client.

6.5 Without limiting any other right of the SCE, if the Client fails to pay for the goods when payment is due SCE may repossess the goods (without liability) and the Client permits SCE to enter its premises for this purpose.

6.6 Risk in any equipment passes to the client upon delivery.

## **7. Personal Property Securities Act 2009 ("PPSA")**

7.1 The Client accepts, acknowledges and agrees that:

(a) terms used in this clause 7 shall have the same meaning as in the PPSA unless otherwise specifically defined herein.

(b) pursuant to the retention of title rights in clauses 6.3 and 11, the Client grants a security interest in all products and equipment supplied by SCE to the Client on credit, including any commingled goods and any goods belonging to SCE used in the provision of the Services (“Goods”);

(c) SCE can, without notice to the Client, seek registration of its security interest on the Personal Property Securities Register (PPSR).

(d) The Client will:

- sign any further documents and/or provide any further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) which SCE may reasonably require to enable perfection of its security interest or registration of a Financing Statement or Financing Change Statement on the PPSR;
- not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any Services, without the prior written consent of SCE;
- give SCE not less than 5 days written notice of any proposed change in its name and/or any other changes in its details (including but not limited to, changes in address, facsimile number, email address, trading name or business practice);
- procure from any persons considered by SCE to be relevant to its security position, such agreement and waivers as SCE may at any time reasonably require;
- To the extent permitted by the PPSA the Client waives its rights to:
  - receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
  - receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA ;
  - receive a statement under subsection 132(4) of the PPSA;
  - redeem Goods after default under section 142 of the PPSA unless SCE agrees in writing to such redemption;
  - reinstate the Security Agreement under section 143 of the PPSA ; and
  - give a Notice of Objection under section 137 of the PPSA.

## **8. Warranties and Liabilities**

8.1 To the maximum extent permitted by law SCE will not be liable for any special, indirect or consequential damages, loss of profit, goodwill, bargain, revenue or loss of anticipated saving or loss, or corruption of data suffered by the Client arising under, pursuant to or as a result of the provision of the Services and in any event the maximum damages available to the Client shall be limited to the Fees paid by the Client.

- Any claims for loss suffered by the Client will be automatically reduced to the extent that the Client’s (including its employees, agents, or consultants) negligence (whether direct or indirect) contributed to the loss.
- Unless expressly provided in the Agreement, SCE excludes all warranties relating to the Services which would otherwise be implied.
- Where legislation implies any condition or warranty relating to the Services, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included provided that the liability of SCE for breach of any such condition or warranty shall be limited, at the option of SCE, to one or more of the following:

- the supplying of the Services again; or
- the payment of the cost of having the Services supplied again.

## 9. Indemnity

9.1 The Client shall indemnify SCE against:

- (a) any claim against SCE arising out of or based on the death or bodily injury of any person or loss, destruction or damage of any personal property caused by the conduct of the Client, its employees or agents;
- (c) any claim against SCE arising out of or based on any claim or action or allegation that SCE has caused third party losses while acting within SCE's authority under any direction of the Client pursuant to the Agreement; and
- (d) all loss (including legal fees and disbursements) incurred by SCE as a result of a breach of the terms of the Agreement by the Client, its employees or agents

## 10. Default and Consequences of Default

10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.

10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify SCE from and against all SCE's costs and disbursements including on a solicitor and own client basis and in addition all of SCE's nominees costs of collection.

10.3 Without prejudice to any other remedies under the Agreement if at any time the Client is in breach of any obligation (including those relating to payment), SCE may suspend or terminate the supply of Services to the Client and any of its other obligations under the Agreement and SCE will not be liable to the Client for any loss or damage the Client suffers because SCE has exercised its rights under this clause.

10.4 If any account remains unpaid at the end of the second month after supply of the Services an immediate amount of the greater of \$20.00 or 10% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 10.1 of this Agreement.

10.5 In the event that any money payable to SCE becomes overdue, or in SCE's opinion the Client will be unable to meet its payments as they fall due then without prejudice to SCE's other remedies at law, then:

- SCE shall be entitled to terminate the Agreement and cancel all or any part of any order of the Client for Services which remain unperformed in addition to and without prejudice to any other remedies; and
- all amounts owing to SCE shall, whether or not due for payment, immediately become payable.
- In the event that:
- in a party's opinion the other party requires it to act in an unethical or unlawful manner; or

- a party forms the opinion that mutual confidence and trust do not exist between SCE and the Client, then without prejudice to that party's other remedies at law:
- that party shall be entitled to terminate the Agreement and cancel all or any part of any order of the Client for Services which remain unperformed in addition to and without prejudice to any other remedies; and
- all amounts owing to SCE shall, whether or not due for payment, immediately become payable.

10.7 In the event that:

(b) a party breaches a warranty or other material provision of this Agreement including (without limitation) a breach of the obligations relating to safety; or

- a party fails to rectify a non-material breach capable of remedy within 7 days of receipt of written notice from the non-breaching party requiring the Client to do so.
- a party becomes insolvent or (where an individual becomes bankrupt), convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(g) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of a party or any asset of a party,

then without prejudice to the other party's remedies at law:

(h) the other party shall be entitled to terminate the Agreement and cancel all or any part of any order of the Client for Services which remain unperformed in addition to and without prejudice to any other remedies; and

(i) all amounts owing to SCE shall, whether or not due for payment, immediately become payable.

10.8 These rights are in addition to any other rights of termination in this Agreement or at law.

## **11. Retention of Title**

Any property brought on to the Client's premises by SCE in the provision of the Services belonging to SCE shall remain the property of SCE and the Client must not sell, pledge, lease or otherwise encumber SCE's property at any time and must ensure that it is kept at all times safe and secure from damage and theft.

## **12. Safety**

12.1 In respect of those Services required to be carried out at the Client's premises the Client must ensure that it provides a safe environment for SCE's employee carrying out the Services which comply with all applicable laws relating to occupational health and safety.

12.2 If, in the opinion of SCE, the Client or its employees fail to comply with any safety requirements SCE may suspend the Services (with no liability to SCE) until such time that the safety requirements are complied with.

### **13. Non – employment of SCE staff:**

13.1 During the period that SCE provides Services to the Client and up to 12 months thereafter, the Client shall not directly or indirectly through any associated company employ or enter into any agreement with, for the provision of services, either as a consultant or independent contractor, or offer any position or employment to, any SCE employee, whether permanent or contracted.

13.2 The Client acknowledges that any breach of this provision will result in substantial damage to SCE and the Client agrees that in the event of breach of this provision the Client will pay to SCE by way of liquidated damages, and not as a penalty, a sum of \$30,000 per SCE employee the Client has offered a position or employment to.

### **14. Confidentiality**

14.1 Each Party agrees to take reasonable measures to ensure any confidential information of the other Party that comes into its possession during the term of the Agreement shall not be disclosed to any third party and must not be used except as required in order for it to carry out its obligations in respect of the Agreement except with the prior written consent of the other Party.

14.2 The obligations contained in this clause 14 shall survive the term or termination of this Agreement and shall be enforceable at any time at law or in inequity.

### **15. Intellectual Property**

15.1 SCE retains all rights over the use or reproduction of any intellectual property developed by it from the provision of the Services.

15.2 SCE retains all rights over all code used in client projects. This may include code SCE developed prior to this Agreement, and any new code that is written during this Agreement. SCE may utilise any code component in other projects at its discretion.

15.3 Except for the ongoing, personal and non-transferable right to use the deliverables resulting from this Agreement, the Client shall not obtain or be granted any intellectual property rights to any deliverable or material supplied by SCE.

15.4 The Client shall not take any action by way of copying, disseminating, transmitting, accessing, or use of any system that may infringe or may be inconsistent with the intellectual property rights of SCE or its licensors.

15.5 For the purpose of this clause, intellectual property rights means without limitation, copyright, patent rights, design rights or trade secrets in connection with the deliverables and their source code, or any source code, scripts or interfaces supplied by SCE and any methodologies or process involved in the performance of the services or any deliverable or materials (including training materials) provided by SCE.

15.6 The Client is not permitted to sell or otherwise distribute the applications SCE develops for the Client nor individual components without written authorisation from an Authorised Representative of SCE.

### **16. Marketing**

16.1 SCE may refer to the Customer's trade name, trade mark and any other identifying logo and briefly describe the Customer's business in SCE's marketing materials (including its online presence) and in its statutory reports.

## **17. Privacy Act 1988**

17.1 If the Client provides SCE with personal information collected from other individuals, the Client warrants to SCE that that information is correct, has been collected in accordance with the applicable privacy legislation and that SCE is authorised to receive that information from the Client and to use it for the purposes of providing the Services.

17.2 In the course of acting for the Client, SCE may disclose to the Client personal information about other individuals in which case the Client agrees that it will use, disclose, handle, store and transfer that information only in accordance with the *Privacy Act 1988 (Cth)*. The Client also agrees that it will comply with SCE's requirements in relation to the protection of personal information.

17.3 The Client agrees for SCE to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by SCE.

17.4 SCE may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

## **18. Disputes**

18.1 Where a dispute, controversy or claim relating to or in connection with this Agreement arises the Parties agree to comply with the following procedure before commencing any legal proceedings:

- (a) The disputing Party will issue a notice to the other Party outlining the Dispute ("Dispute Notice").
  - (b) Authorised Representatives nominated by each Party will meet within 10 business days of issue of the Dispute Notice.
- Where the dispute remains unresolved after five business days from the meeting either Party may refer the matter for mediation with the Australia Commercial Dispute Centre.
  - The cost of mediation will be borne equally by the Parties.
  - If the dispute cannot be resolved through mediation then the Parties are free to commence legal proceedings.

## **19. General**

19.1 If any provision of these terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected prejudice or impaired.

19.2 These Terms and all Services supplied by SCE are subject to the laws of South Australia and the Parties hereby submit to the non-exclusive jurisdiction of the laws of South Australia.

19.3 The Client may not assign the Agreement without the prior written consent of SCE but SCE may license or subcontract all or any part of its rights and obligations under the Agreement.

19.4 Neither Party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either Party.

19.5 None of SCE's, employees, agents or representatives who are not Authorised Representatives are authorised to make any representations, statements, conditions or agreements not expressed by SCE in writing nor is SCE bound by any such unauthorised statements.

19.6 No modification of, or amendment to, this Agreement, nor any waiver of any rights under this Agreement, except as provided in this Agreement, shall be effective unless in writing signed by both Parties.