

Conditions of Purchase

1. Definitions

"**Conditions**" means these Conditions of Purchase.

"**Endeavour**" means Endeavour Energy Network Operator Partnership
ABN 11 247 365 823

"**Price**" means the price of the Goods set out in the Order.

"**Order**" means the purchase order form issued by Endeavour which is overleaf.

"**Statement of Business Ethics**" means Endeavour Energy's Statement of Business Ethics which is posted on Endeavour Energy's website www.endeavourenergy.com.au

"**Supplier**" means the supplier whose details are set out in the Order.

"**Goods**" means the goods and services (if any) specified in the Order to be supplied by the Supplier to Endeavour.

2. Agreement

- a) Goods are purchased by Endeavour on these Conditions.
- b) These Conditions constitute the whole of the agreement between the Supplier and Endeavour in relation to this subject matter EXCEPT WHERE Endeavour and the Supplier have executed a separate agreement that covers the supply of the Goods in which case the Supplier is obliged to supply the Goods under the terms and conditions of that agreement. In the event of any inconsistency, ambiguity or conflict arising between the terms and conditions of any other agreement between Endeavour and the Supplier governing the supply of the Goods and the Conditions of Purchase, the former prevails to the extent of such inconsistency, ambiguity or conflict.
- c) These Conditions apply to the exclusion of all conditions in the supplier's offer for or acceptance of the Order, which the Supplier is deemed to waive by accepting the Order.
- d) Before commencing design or construction work, the Supplier must:
 - pay to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building and/or construction work under the Building and Construction Industry Long Service Payments Act 1986 (NSW); and
 - produce to Endeavour the documentary evidence of payment of the levy.

3. Variation

These Conditions or the Order may be varied or cancelled but only if Endeavour gives the Supplier notice in writing of the variation or cancellation not less than 14 days before the date due for performance by the Supplier.

4. Charges

- a) The Supplier will charge Endeavour the Price for Goods delivered pursuant to these Conditions. If no Price is specified in the Order, the Supplier will charge a price not greater than the price last quoted or charged to Endeavour.
 - b) The Supplier warrants that the Price is not subject to variation and includes all costs of manufacture, distribution, transportation, warehousing, delivery, insurance, government taxes, duties and charges, any variation in the exchange rate, and all costs of the Supplier's compliance with all applicable laws and regulations.
 - c) The Supplier will submit to Endeavour a tax invoice for Goods delivered to Endeavour within 7 days from the date of delivery.
 - d) Endeavour will pay for Goods which Endeavour has accepted in accordance with clause 9 at the end of the month following the month in which the Goods are received or rendered.
 - e) Endeavour will not pay the Supplier for any Goods which Endeavour rejects in accordance with clause 6 until those Goods are re-supplied in accordance with clause 6.
 - f) The Supplier acknowledges that all prices are inclusive of GST and Endeavour is not required to pay any additional amount on account of GST.
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5. Delivery

- a) The Supplier will deliver the Goods to Endeavour on the date nominated in the Order.
- b) Subject to clause 6, risk in the Goods remains with the Supplier until the Goods are delivered to Endeavour and accepted in writing by an authorised officer of Endeavour.

- c) Title in Goods will pass to Endeavour upon delivery.
 - d) The Supplier's compliance with any obligation to deliver or render the Goods within a time stipulated in the Order or any agreed extension to that time will be of the essence of these Conditions.
 - e) The Supplier indemnifies Endeavour against all loss and damage to Endeavour arising from or in connection with the Supplier's failure to deliver Goods within the time stated in the Order.
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6. Inspection

- a) Endeavour will inspect the Goods upon delivery pursuant to clause 5(a). If the Goods meet the description in the Order; an officer of Endeavour will accept the delivery in writing.
- b) If in Endeavour 's reasonable opinion the Goods do not meet the description in the Order, Endeavour may reject those Goods by giving Supplier written notice within 14 days from the date of delivery.
- c) Goods which Endeavour rejects within 14 days of delivery will be deemed not to have been accepted by Endeavour, notwithstanding any payment that Endeavour may have made for such Goods. Such payment will not constitute a waiver by Endeavour of the Supplier's warranties.
- d) If upon inspection of Goods under clause 6(a) Endeavour is of the view that the quantity of Goods delivered does not meet the quantity specified in the Order, Endeavour will notify the Supplier of the shortage within 14 days. Endeavour may accept the delivered Goods and the Supplier must make good any shortages in delivery.
- e) Endeavour accepts no responsibility or liability for goods supplied in excess of the quantities set out in the Order.
- f) If Endeavour at any time forms the reasonable opinion that the Goods or any part of them are deficient then Endeavour may at its option:
 - (i) require those Goods be re-supplied or performed again;
 - (ii) terminate this Order; or
 - (iii) have the Goods, or similar goods or services, provided by some third party and invoice the Supplier the cost for the Goods supplied by the third party.

7. Installation

Where the Supplier or its employees, agents or sub-contractors ("**Representatives**") are required to enter the premises of Endeavour in connection with the provision of Goods, the Supplier will, and will cause its Representatives to comply with all instructions of Endeavour or its authorised officers.

8. Goods manufactured to Endeavour 's order

- a) Endeavour may request the Supplier to manufacture the Goods to meet Endeavour's specifications, and may provide details of the specifications to the Supplier or request that the Supplier design the Goods.
 - b) Any specifications which Endeavour has provided to the Supplier form part of the Order and the Supplier acknowledges that it has carefully examined all such specifications, drawings, samples and patterns relating to the Goods.
 - c) The Supplier warrants that any Goods manufactured by the Supplier under this clause will be manufactured in accordance with the drawings and diagrams approved by Endeavour.
 - d) The Supplier will be responsible for any discrepancies, errors or omissions in the drawings and diagrams, notwithstanding that Endeavour has approved them.
 - e) The Supplier assigns to Endeavour all intellectual property rights in all goods manufactured in accordance with any material or information provided by Endeavour, under this clause. The Supplier will at all times treat all such information as confidential to Endeavour and will on Endeavour's request, deliver up all such materials and information. The Supplier undertakes that he or she will not reproduce, show or sell to any person or company other than Endeavour the Goods, or identical goods or services, manufactured or developed by the Supplier to inspect and test the Goods.
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9. Warranties

The Supplier warrants that in the provision of the Goods:

- a) it will strictly comply with all applicable laws, ordinances, orders, rules and regulations, whether international, national, state or local, and upon request by Endeavour will furnish Endeavour such evidence of compliance as Endeavour may reasonably require;
 - b) Goods will correspond strictly with the description of the same as detailed on the Order, will conform to any applicable specifications, and will be of good and merchantable quality and will be fit for the purposes for which the Goods are sold.
 - c) on delivery:
 - (i) Goods will be free and clear of all liens and encumbrances;
 - (ii) the Supplier has a good and marketable title to the Goods, and the Supplier agrees to hold Endeavour free and harmless against any and all claimants to merchandise;
 - d) Goods will have been produced, sold and delivered to Endeavour in compliance with all applicable laws and regulations, including Part VA of the *Competition and Consumer Act* ;
 - e) if the Goods include any service, those services will be performed by competent staff and all reasonable care and skill will be exercised by such staff in the provision of those services;
 - f) it will ensure each of its Representatives engaged to provide the Goods will conduct themselves in accordance with the Statement of Business Ethics and declare any conflicts of interest (actual, potential or reasonably perceived) to Endeavour Energy at the earliest reasonable opportunity after becoming aware of such conflicts; and
 - g) the sale or use of the Goods does not infringe any Australian patent, trade mark or copyright and the Supplier will hold Endeavour and its vendees harmless against any suit or judgment entered against Endeavour or its vendees on account of any infringement.
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10. Indemnity

- a) The Supplier is liable for, and on demand will demand will indemnify Endeavour against any loss, claim, actions, demands, proceedings, judgments, damage, cost, charge,

expense, harm, injury or liability which Endeavour may sustain or incur as a consequence of:

- (i) any breach by the supplier of any of its obligations under these conditions; and
 - (ii) the negligence or wrongful act or omission of the Supplier.
- b) The Supplier indemnifies Endeavour against any damage sustained by Endeavour's property or against any claim for loss or injury to any person or to the property of any person by reason of Supplier's negligence, or any act or omission on the part of Supplier, its employees, sub-contractors or agents, arising out of the execution of these Conditions.
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11. Set off

- a) The Supplier authorises Endeavour to set-off all or any part of any amount which is due and payable by the Supplier to Endeavour against all or any part of any amount which is due and payable by the Endeavour to the Supplier.
 - b) Endeavour may apply any liabilities, claims, demands, costs, damages, losses and expenses arising out of or in relation to the Supplier's breach of any term or condition of these Conditions in or towards the satisfaction of any monies then due and unpaid by Endeavour to the Supplier.
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12. Other Provisions

- a) The Supplier must not assign its rights and obligations under these Conditions.
 - b) The Supplier will not perform its obligations under these Conditions through a sub-contractor except with Endeavour's prior written permission.
 - c) If either party becomes bankrupt, is placed under administration or makes any arrangement for the benefit of creditors or being a company goes into liquidation or becomes insolvent the other party may cancel the contract without further liability.
- a) If Endeavour waives any of its rights under these Conditions, that waiver will not be construed as a continuing waiver and all of Endeavour's rights under these Conditions will remain enforceable in full.
 - b) The law applicable to these Conditions is the law of New South Wales.

- c) The Supplier in entering into these Conditions does not rely on any statement or representation of or on behalf of Endeavour which is not expressly set out in the Order or these Conditions.
- d) Endeavour may give any notice to the Supplier by facsimile to the number specified in the Order or by sending the notice by post addressed to the Supplier at the Supplier's address specified in the Order. Notices served by facsimile will be deemed to have been received on completion of successful transmission and notices served by mail will be deemed to have received the next business day after posting.
- e) Any part of these Conditions which is or becomes void is severable.