

**SOLID ENERGY NEW ZEALAND LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT)
TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND/OR SERVICES**

1. TERMS OF SUPPLY

- 1.1 The Supplier must receive a valid Purchase Order before supplying Goods and/or Services.
- 1.2 Unless otherwise agreed in writing, these Terms apply exclusively to all Goods and/or Services supplied by the Supplier to Solid Energy.
- 1.3 The contract for the sale and purchase of Goods and/or Services (**Contract**) will arise on Solid Energy receiving written acceptance of a Purchase Order, by delivery of the Goods, or by commencement of the Services and will embody the terms of the Purchase Order and these Terms.
- 1.3 No other terms and conditions whether oral or written, including without limitation any terms and conditions on the Supplier's quotation or the Supplier's terms and conditions of sale or trade or supply of services, and whether precedent or subsequent in time will have any force or effect unless specifically agreed to in writing by both parties.

2. PRICE AND PAYMENT

- 2.1 Unless the Purchase Order provides that progress payments are to be made (in which case the Supplier will send GST tax invoices for each progress payment), the Supplier must send a valid GST tax invoice (if GST is applicable) to Solid Energy upon delivery of the Goods and/or upon completion of the Services.
- 2.2 Unless the Purchase Order provides otherwise, the price excludes GST.
- 2.3 Unless the Purchase Order provides otherwise, the Supplier understands, undertakes and agrees that:
- (a) the price for the Goods is deemed to include freight, packaging, crating, carting, loading and insurance;
 - (b) the Supplier will render a separate invoice for each shipment;
 - (c) the Supplier will show the Purchase Order number on all invoices, packages, bills of lading and in all other documents or communications concerning the Purchase Order;
 - (d) the Goods must be shipped by the route designated or agreed by Solid Energy, (if any). Any additional freight or cartage costs incurred directly or indirectly as a result of the Supplier failing to observe this condition will be charged to the Supplier's account; and
 - (e) the price is deemed to include all taxes (except GST) and duties payable by Solid Energy.
- 2.4 Subject to the Supplier having complied with these Terms, Solid Energy agrees to pay the Supplier the price specified in the Purchase Order on the 20th of the month following receipt of the Supplier's valid GST tax invoice, except where Solid Energy disputes the invoice, in which case:
- (a) Solid Energy will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
 - (b) if the resolution of the dispute determines that Solid Energy is to pay an amount to the Supplier, Solid Energy will pay that amount as soon as practicable after resolution of the dispute.
- 2.5 Solid Energy may reduce or withhold any payment due to the Supplier by any amount for which the Supplier is liable to Solid Energy, including costs, charges, damages and expenses or any amount owing to Solid Energy generally or under any other contract. This does not limit the right of Solid Energy to recover those amounts in other ways.

3. PACKING AND DELIVERY

- 3.1 The Supplier is responsible for ensuring that the Goods are properly identified, adequately packed for protection against damage and delivered by the time, date and place specified in the Purchase Order.
- 3.2 The Supplier must include a delivery docket in each package of Goods. The delivery docket must detail the Purchase Order number, and the quantity and description of the Goods delivered.
- 3.3 All delivery dockets must be signed by Solid Energy personnel as proof of delivery and such proof of delivery retained by the Supplier.
- 3.4 If the Goods are hazardous or dangerous then they must be transported by the Supplier or Supplier's agent in accordance with all relevant legislation covering the handling and transportation of hazardous and dangerous goods.

4. DELAY

- 4.1 Time is of the essence for the delivery of the Goods and/or Services to Solid Energy under the Contract.
- 4.2 In the event of delay in the delivery of the Goods and/or Services, the Supplier must give Solid Energy the earliest possible notice in writing stating:
- (a) the cause of the delay; and

- (b) the effect of the delay on the delivery of the Goods and/or Services (as the case may be).

- 4.3 In the event of delay in the delivery of the Goods and/or Services, Solid Energy may terminate the Contract with immediate effect or grant an extension of time and hold the Supplier responsible for any losses it suffers.

5. INSPECTION

Solid Energy reserves the right to inspect all deliveries of the Goods. The Supplier will at no cost to Solid Energy make up any shortages identified during an inspection within 7 days of being advised of the same. Without limiting Solid Energy's right to reject the Goods in accordance with these Terms, if the Goods have been damaged in transit or are otherwise defective on inspection, the Supplier will ensure replacement goods are supplied within 7 days of being notified by Solid Energy.

6. TITLE AND RISK

- 6.1 The Supplier warrants that it has clear title to the Goods free of any security interests, liens, charges and encumbrances.
- 6.2 Unless otherwise agreed in writing, risk and title in the Goods will pass from the Supplier to Solid Energy when the Goods are delivered to the "Ship To" Address.
- 6.3 The parties agree that the Contract does not constitute a security agreement and the Supplier will not register a security interest in the Goods unless expressly agreed by Solid Energy in writing.

7. WARRANTIES AND REJECTION

- 7.1 The Supplier warrants that:
- (a) the Goods will be free from defect in design, material, workmanship and quality, be fit for purpose (including any purpose for which Solid Energy has made known to the Supplier) and conform to the Purchase Order.
 - (b) it will exercise the degree of skill, care and diligence normally expected of a competent professional in carrying out the Services and the Services will conform to the Purchase Order.
- 7.2 If any of the Goods are found at any time to be defective in design, material, workmanship and quality, not fit for purpose or otherwise not in strict conformity with the Purchase Order, Solid Energy, in addition to any rights to which it may have under warranties or otherwise, will have the right to reject and return the Goods for full credit. Without limiting the above right of rejection, Solid Energy will have the right to require prompt replacement, repair or correction of the Goods at the Supplier's sole cost.
- 7.3 If the Supplier is unable or unwilling to effect such replacement, repair or correction of the Goods, Solid Energy may do so by using its own workmen, goods or facilities or by outside contract, and will be entitled to charge the Supplier for all costs of doing so or set off any such costs against the amount payable by Solid Energy to the Supplier.

8. TERMINATION

- 8.1 Unless otherwise provided in clause 4.3, 8.2, 8.3 and 13.4, Solid Energy may terminate the Contract if the Supplier breaches any of these Terms and fails to remedy the breach within 7 days of Solid Energy giving written notice to the Supplier specifying the breach.
- 8.2 Solid Energy may terminate the Contract immediately on written notice if the Supplier has a receiver, liquidator, manager, administrator or other like person appointed or passes a resolution for winding up or enters into an arrangement with creditors (other than for the purpose of amalgamation or reconstruction) or the occurrence of any analogous process in any jurisdiction.
- 8.3 Notwithstanding 8.1 or 8.2 above, Solid Energy reserves the right to cancel at any time, without penalty, the supply of the Goods and/or Services in whole or in part upon written notice to the Supplier whether for cause or otherwise.

9. INDEMNITY

- 9.1 The Supplier indemnifies and holds harmless Solid Energy and its officers, employees and agents from any and all liability, claims, damages, costs, expenses and any other losses (including special and consequential damage and loss) arising directly or indirectly from any breach by the Supplier of the Contract or any negligent or wrongful act or default of the Supplier, its employees, subcontractors and agents.
- 9.2 The indemnity set out above is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract, delivery of the Goods or completion of the Services.

10. CONFIDENTIALITY

- 10.1 In supplying the Goods and/or Services, the Supplier will have access to information relating to and about Solid Energy including the terms of the Contract. The Supplier covenants that it will keep

all such information confidential and will use the information solely for the purposes of providing the Goods and/or Services.

- 10.2 The Supplier will not, except with the consent of Solid Energy in writing, release information relating to the Goods and/or Services for advertising, promotional or technical purposes or otherwise give it publicity in any fashion, nor will it use the name of Solid Energy for or in connection with any advertising or promotional purpose of the Supplier.

11. INTELLECTUAL PROPERTY

- 11.1 All intellectual property rights belonging to the Supplier prior to the issue of a Purchase Order will remain the intellectual property of the Supplier.
- 11.2 The Supplier agrees that any new intellectual property that arises or is created by the Supplier or any of the Supplier's employees or subcontractors in the course of the supplying the Goods and/or Services will be Solid Energy's upon creation.
- 11.3 The Supplier grants to Solid Energy a perpetual, royalty free non-exclusive licence to use the Supplier's intellectual property in relation to Solid Energy's use of the Goods and/or Services which is owned by the Supplier under clause 11.1.
- 11.4 The Supplier agrees to indemnify and hold harmless Solid Energy from any claims or action arising from the alleged infringement of any patent, registered design or trademark or infringement of copyright as result of the use or sale of the Goods or the performance of the Services.

12. PLANT AND EQUIPMENT

- 12.1 Unless the Purchase Order provides otherwise, the Supplier agrees to supply at its expense, all labour, plant, equipment, tools or other property and items necessary to fulfil its obligations under the Purchase Order.
- 12.2 Any plant, equipment or other property that Solid Energy provides to the Supplier remains the property of Solid Energy and must be returned to Solid Energy upon request in the same condition as originally received by the Supplier (reasonable wear and tear excepted).
- 12.3 All plant and equipment must be used by the Supplier in accordance with Solid Energy's site requirements.
- 12.4 The Supplier is responsible for and will compensate Solid Energy for any loss or damage to Solid Energy's plant, equipment or other property (reasonable wear and tear excepted).

13. HEALTH AND SAFETY – SITE OBLIGATIONS

- 13.1 When visiting any of Solid Energy's sites the Supplier will ensure that its employees, subcontractors and agents abide by and co-operate with all health, safety and operational requirements of Solid Energy. The Supplier will ensure that its employees, subcontractors and agents will advise Solid Energy of any known hazards in relation to the Goods and/or Services prior to or at the time of delivery of the Goods or Services.
- 13.2 Without limiting clause 13.1, the Supplier will ensure its employees, subcontractors and agents comply with requirements specified in Solid Energy's drug and alcohol policies and procedures. The Supplier will ensure that its employees, subcontractors and agents agree to submit to random drug and alcohol testing when undertaken by Solid Energy at its sites from time to time.
- 13.3 In the event that Solid Energy discovers an unsafe practice or a breach of this clause 13, then in addition to any other rights under these Terms, Solid Energy may immediately suspend the work associated with the unsafe practice or breach. The suspension will not be lifted until the work area is made safe, the unsafe practice removed or the breach rectified. All direct costs under this clause 13 will be borne by the Supplier.
- 13.4 If the Supplier does not rectify the breach or unsafe practice as described in clause 13.3, then Solid Energy has the right to terminate the Contract immediately.

14. COMPLIANCE WITH LAWS

The Supplier must comply with all relevant laws and standards applicable to the supply of the Goods and/or the Services and the operation of any equipment used in the performance of the Services.

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1 The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without the prior written approval of Solid Energy.
- 15.2 Any change in the management or control of the Supplier will be deemed to be an assignment for the purposes of this clause 15.

16. DISPUTES

The parties will attempt in good faith to settle any dispute by mediation. However, if any question, difference or dispute arising out of, or in relation to the supply of the Goods and/or Services cannot be resolved by mediation it will be settled by the arbitration of a single arbitrator appointed by the Supplier and Solid Energy and in the event of their failing to agree, an arbitrator will be appointed by the President of the New Zealand Law Society. The arbitration will be conducted in accordance with the Arbitration Act 1996, and this clause 16 will be

deemed to be a submission to arbitration pursuant to the provision of that Act.

17. INDEPENDENT CONTRACTOR

- 17.1 The Supplier provides the Services as an independent contractor and not as an employee of Solid Energy. Nothing in these Terms will be deemed to create an employer/employee relationship between Solid Energy and the Supplier, nor will the Supplier be regarded as an agent of Solid Energy.
- 17.2 Where applicable the Supplier will obtain a Non-Resident Contractors Tax (NRCT) exemption certificate in relation to the Services. However, if no NRCT exemption certificate is supplied by the Supplier then any applicable NRCT will be deducted from the price payable at the time of payment, at the applicable rate set at that time by the New Zealand Inland Revenue Department.

18. CONSUMER GUARANTEES ACT

The parties agree that the Goods and/or the Services are acquired for the purposes of a business and that the Consumer Guarantees Act does not apply.

19. COSTS

The Supplier will pay the costs and expenses, including legal fees, on a solicitor and own client basis, incurred by Solid Energy in exercising any of its rights or remedies under the Contract.

20. INSURANCE

- 20.1 The Supplier must effect or cause to be effected insurance against all insurable risks for loss, damage or destruction to the Goods for their full reinstatement or replacement value, including cover while the Goods are in transit.
- 20.2 The Supplier must effect or cause to be effected a public and products liability policy with a limit of indemnity of not less than \$10 million for any one occurrence, (and with respect to products liability also in the aggregate).
- 20.3 If the Supplier is carrying out Services on a Solid Energy site then it must effect or cause to be effected comprehensive motor vehicle insurance (which includes third party vehicle insurance with a limit of liability of not less than \$10 million).
- 20.3 The Supplier must effect any other insurances reasonably required by Solid Energy from time to time, including contract works insurance and professional indemnity insurance.
- 20.4 The provisions of this clause 20 are not to be read so as to reduce the Supplier's liability under any other provision of the Contract.

21. GOVERNING LAW

- 21.1 The Contract is governed by and construed in accordance with the laws of New Zealand.
- 21.2 The Supplier and Solid Energy agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to the Contract.
- 21.3 Both parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand and the courts of appeal from them.

22. GENERAL

- 22.1 The rights, remedies and powers of Solid Energy under these Terms are in addition to any rights, remedies and powers provided for by New Zealand law.
- 22.2 Any of Solid Energy's rights under these Terms can only be waived by Solid Energy in writing.
- 22.3 Clauses 9,10,11,19, 21 and 22 survive the termination or expiry of the Contract.

23. DEFINITIONS

Goods means the goods or materials specified in the Purchase Order to be supplied by the Supplier.

GST means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985.

Purchase Order means the purchase order issued by Solid Energy to the Supplier for the supply of Goods and/or Services.

Services mean the services specified in the Purchase Order to be supplied by the Supplier.

Solid Energy means Solid Energy New Zealand Limited (subject to Deed of Company Arrangement) and includes any and all of Solid Energy's wholly owned subsidiaries (all subject to Deed of Company Arrangement) (as the context requires).

Supplier means the person, company or other legal entity to whom Solid Energy issues a purchase order for the provision of Goods and/or Services.

Terms mean these terms and conditions.