



**CREDIT ACCOUNT APPLICATION
AND
TERMS & CONDITIONS OF SALE
BETWEEN
ENERGIE GROUP AUSTRALIA PTY LTD**

ABN 50 166 500 787
460 Victoria Road, Malaga WA 6090
Phone: 08 9203 2000 Fax: 08 9203 2044

AND

.....
(Customer Name)

DATED

.....

CREDIT APPLICATION

Type of entity: () Sole Trader () Partnership () Company () Trustee

Customer's Name: ("Customer")

ACN/ABN (if applicable):

Trading Name:

Registered Office Address:

..... Postcode:

Postal Address (if different to above):

..... Postcode:

Phone: (.....)..... Fax: (.....).....

Nature of Business Activities:

Commencement Date: Paid up Capital: \$

Trading Premises: () Owned () Leased If Leased, name Lessor

Anticipated volume of monthly trading:

Email address (Accounts) Email address (Purchases)

DETAILS OF DIRECTORS / PRINCIPALS AND PARTNERS:

Name	Address	Telephone	Date of Birth
.....
.....
.....

BANK DETAILS:

Name of Bank: BSB No:

A/C Number: How long with Bank:

Address of Bank:

Credit Limit Requested: \$

NAME, ADDRESS AND CONTACT DETAILS OF THREE TRADE REFERENCES:

Name	Address	Telephone	Email Address
.....
.....
.....

IMPORTANT NOTICE TO CUSTOMER FOR CREDIT, PLEASE READ THE FOLLOWING CAREFULLY BEFORE SIGNING BELOW

APPLICATION AND PRIVACY ACKNOWLEDGMENT

CREDIT APPLICATION


1. The Customer hereby applies to establish credit facilities with Energie Group Australia Pty Ltd and each related entity (as defined in the Corporations Act 2001) of Energie Group Australia Pty Ltd ABN 50 166 500 787 from time to time and any of the Company's assigns. This agreement extends to a company which is not now, but is in the future a related entity of Energie Group Australia Pty Ltd ABN 50 166 500 787 ("the Company").
2. The Customer acknowledges and agrees that the attached Terms & Conditions hereunder ("Terms and Conditions") apply to all sales of goods by the Company (unless otherwise agreed in writing with the Company and agrees to abide by the Terms and Conditions.
3. The Customer acknowledges and agrees that all legal costs (on a full indemnity basis), charges, duties and other expenses incurred by the Company in respect of this agreement or the securities or other documentation required hereunder or in relation to registering, maintaining or releasing any security interest, charge or caveat (including the cost of registering any financing statement or financing change statement), or incurred as a result of the Customer failing to perform its covenants and obligations contained herein, shall be paid by the Customer to the Company. The expenses include, but are not limited to, the commission payable to a mercantile agent or a debt collector to pursue or recover outstanding monies pursuant to this agreement and the liability to pay this commission arises at the time the recovery is placed in the hands of the debt collector.


ACKNOWLEDGMENT – PRIVACY ACT 1988 (COMMONWEALTH)

1. The Privacy Act 1988 requires the Company to have procedures in place that cover the collection, use and disclosure of personal information that the Company may receive from its customers. This information is needed to process the requirements of the Company's customers and is used for internal purposes.
2. The Customer authorises the Company to carry out credit checks and obtain credit reports in respect of their credit worthiness in accordance with any law with respect thereto in force from time to time and to disclose to credit reporting agencies the information outlined in this agreement for this purpose.
3. The Customer agrees that the Company may give to and seek from any trade references or credit providers named in this agreement and any providers of credit that may be named in a credit report issued by a credit reporting agency, information about the Customer.
4. The Customer understands that this information can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.


The Customer warrants that it has all requisite authority and that the current document as completed and all the information supplied about the Customer to the Company in connection with the application is true and correct and that there is no known reason to suspect the Customer is or may become insolvent.

SIGNED AS A DEED BY THE CUSTOMER

 Signed:
Position held:
PRINT NAME:
Date:

Signed: 
Position held:
PRINT NAME:
Date:

WITNESS

 Signed:
Address:
PRINT NAME:
Date:

Signed: 
Address:
PRINT NAME:
Date:

IMPORTANT NOTICE TO OFFEREE(S) TO PROVIDE A PERSONAL GUARANTEE, PLEASE READ THE FOLLOWING CAREFULLY BEFORE SIGNING BELOW

PERSONAL GUARANTEE

1. I/we ("the Guarantors") hereby unconditionally and irrevocably guarantee to the Company:
 - (a) the due and punctual payment, without any deduction or set off whatsoever, of the price and taxes charged by the Company to the Customer for the supply of goods and services ("the Price") and the payment of all other sums which now or in the future may be or become owing (including contingently) by the Customer to the Company on any account whatsoever (whether such indebtedness or liability be present or future, actual or contingent, fixed or fluctuating, liquidated or unliquidated) or relating to any other third party dealings or arrangements ("Other Monies"); and
 - (b) the performance and observance by the Customer of all of the obligations contained in or implied under the Terms and Conditions that must be performed and observed by the Customer (together, Guaranteed Obligations).
2. Paragraph 1 applies and the Guarantors obligations under paragraph 1 remain unaffected despite:
 - (a) a rule of law or equity to the contrary; or
 - (b) an insolvency event affecting a person or the death of a person; or
 - (c) the partial performance of the Guaranteed Obligations; or
 - (d) the Company refusing further credit to the Customer; or
 - (e) the Company with or without the Guarantors prior knowledge, varying the terms and conditions of the Customer's trading account (even if this increases the Guarantors' liability under this guarantee and indemnity);
 - (f) by the release of the Guarantors or other guarantors of the Customer or if a guarantee is unenforceable against the Guarantors or other guarantors;
 - (g) any collateral or other security and guarantee now or hereafter held by the Company and the Guarantors agree that the Company's rights under this guarantee and indemnity shall not be merged, discharged or substituted in any such other security and guarantee; or
 - (h) the Guaranteed Obligations not being enforceable at any time (whether by reason of a legal limitation, disability or incapacity on the part of the Customer and whether this agreement is void ab initio or is subsequently avoided) against the Customer; or
- (i) the Company granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Customer or the Guarantors of an obligation; or
- (j) Another thing happening that might otherwise release, discharge or affect the obligations of the Guarantors under paragraph 1.
3. The Guarantors agree that this is a principal obligation and is not to be treated as ancillary or collateral to another right or obligation and is independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which the Company or another person may hold concerning the Guaranteed Obligations.
4. The Guarantors agree that the Company may enforce this clause against them without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.
5. The Guarantors agree to be bound by the Terms and Conditions within this document and any other accompanying additional terms and conditions as if they were the principal debtor. This is a continuing guarantee and irrevocable until the Company has been paid the entire Price and Other Monies. This guarantee may be enforced by the Company, its successors and assigns.
6. As a separate and independent agreement the Guarantors agree to indemnify and keep harmless the Company against any of the Price and Other Monies which is not paid by the Customer to the Company from time to time and against any losses, costs (including but not limited to legal costs on a full indemnity basis) or damages of whatsoever nature incurred by the Company as a result of the Customer failing to pay the Company the Price or Other Monies or in relation to registering, maintaining or releasing any security interest, charge or caveat (including the cost of registering any financing statement or financing change statement) or as a result of the failure or default of the Customer in the performance of their covenants and obligations contained under this agreement or under any other agreement between the Company and the Customer.


ACKNOWLEDGMENT – PRIVACY ACT 1988 (COMMONWEALTH)


7. The Privacy Act 1988 requires the Company to have procedures in place that cover the collection, use and disclosure of personal information that the Company may receive from its customers. This information is needed to process the requirements of the Company's customers and is used for internal purposes.
8. The Guarantors authorise the Company to carry out credit checks and obtain credit reports in respect of their credit worthiness in accordance with any law with respect thereto in force from time to time and to disclose to credit reporting agencies the information outlined in this agreement for this purpose.
9. The Guarantors agree that the Company may give to and seek from any trade references or credit providers named in this agreement and any providers of credit that may be named in a credit report issued by a credit reporting agency, information about them.
10. The Guarantors understand that this information can include any information about their credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.
11. The Guarantors acknowledge further details of the Company's privacy policy and credit reporting policy are available on request or on the Company's website.


MUST BE SIGNED BY ALL PARTIES GIVING A PERSONAL GUARANTEE – SIGNED AS A DEED


GUARANTORS:


WITNESSED BY:


 Guarantor Signature:
Position Held:
Print Full Name:
Date:

Witness Signature: 
Full Name of Witness:
Address of Witness:
Date:


 Guarantor Signature:
Position Held:
Print Full Name:
Date:

Witness Signature: 
Full Name of Witness:
Address of Witness:
Date:

 Guarantor Signature:
Position Held:
Print Full Name:
Date:


Witness Signature: 
Full Name of Witness:
Address of Witness:
Date:

MUST BE SIGNED BY ALL PERSONS OFFERING A PERSONAL GUARANTEE AS A WAIVER TO YOUR RIGHTS TO OBTAIN INDEPENDENT LEGAL ADVICE:

 Signed:


PRINT NAME:

Date:

 Signed:

PRINT NAME:

Date:


 Signed:

PRINT NAME:

Date:

ALTERNATIVELY,

Signed by legal practitioner that explained obligations to the persons offering a personal guarantee to this account.

 Signed:

PRINT NAME:

Date:

LEGAL FIRM NAME:

ACCOUNT APPLICATION ACCEPTANCE: (OFFICE USE ONLY)

Credit Limit

Date

Authorised by

\$

Account Code:

Date Account Opened:.....

Approved by:

Account Closed by:

TERMS AND CONDITIONS

1. Applicability of Terms and Conditions

1.1 Until the Company (hereinafter referred to as "Energie Group Australia") notifies a Customer of replacement terms and conditions, these Terms and Conditions will apply to all sales of products ("Products") and supplies of services ("Services") by Energie Group Australia and will form part of any contract resulting from any Customer (hereinafter referred to as the "Purchaser") placing an order with Energie Group Australia except as varied by written agreement by Energie Group Australia and the Purchaser ("Order").

1.2 In the event of any inconsistencies between any Order or other documentation of the Purchaser and these Terms and Conditions, these Terms and Conditions will prevail.

1.3 The Purchaser agrees to abide by Energie Group Australia's further terms and conditions of supply as may be notified by Energie Group Australia to the Purchaser from time to time by notice forwarded to the Purchaser's address or its facsimile number notified on the front page hereof.

2. Credit Facility

2.1 The Purchaser agrees that this trading agreement and each application for credit made by the Purchaser shall be deemed to have been accepted from the date of Energie Group Australia's first invoice to the Purchaser after the date of this trading agreement and without further notice to the Purchaser, this document shall immediately have effect as an agreement by deed between Energie Group Australia and the Purchaser.

2.2 Any credit allowed by Energie Group Australia under this agreement is not unlimited. If no written notice of the credit allowed from time to time by Energie Group Australia is provided to the Purchaser then the credit limit is reflected by the highest amount of credit extended under this agreement at the immediate point in time. The credit limit stated herein, if any, does not limit or bind Energie Group Australia in anyway whatsoever. Further, the Purchaser agrees they are liable to pay the Price and Other Monies irrespective of whether the value of those goods and services supplied, either alone or in conjunction with any accumulated debt of the Purchaser, exceeds the credit limit stated herein.

2.3 Energie Group Australia may at any time withdraw or suspend this facility or increase or decrease the limit of this facility without notice to the Purchaser. Energie Group Australia may require security satisfactory to Energie Group Australia (including further guarantees) to be given as a condition precedent to the continuation of this facility. Energie Group Australia may at any time require payment in advance of the whole or any part of the Price as a condition precedent to the continued supply of goods and/or services by Energie Group Australia to, or at the request of, the Purchaser. Energie Group Australia can, without any claim for loss or damage whatsoever by the Purchaser in doing so, cease supply of goods and/or services to, or at the request of, the Purchaser if there are any outstanding payments due by the Purchaser to Energie Group Australia on any account whatsoever or if Energie Group Australia has reason to doubt the Purchaser's ability to pay for the supply in the future.

3. Offer and Conclusion of a Contract

3.1 A quotation is not an offer by Energie Group Australia to sell or supply and may be withdrawn or varied at any time prior to Energie Group Australia's acceptance of an Order, and is void after thirty (30) days unless extended in writing by Energie Group Australia. In addition, prices are subject to variation in accordance with clause 4. Energie Group Australia reserves the right to correct typographical and clerical errors. Any and all declarations of acceptance and Orders need to be confirmed by Energie Group Australia in writing or by fax to become legally effective. Energie Group Australia's issue of an Order acknowledgement is

not and does not imply acceptance of any terms or conditions in any Order form or other documentation of the Purchaser.

3.2 Energie Group Australia's employees are not authorised to make any oral collateral agreements or oral confirmations which go beyond the content of the written contract and the Purchaser will not rely on any such oral collateral agreements or oral confirmations.

3.3 In the event that Energie Group Australia cannot perform an accepted Order for whatever reason, Energie Group Australia will immediately inform the Purchaser that the performance is not available and the Purchaser's counter-performance relating to the specific accepted Order will be immediately reimbursed.

3.4 Only properties which are set out in the technical product description of an Order are considered to be agreed as quality of the Products. Public statements, recommendations or advertising of the manufacturer are not considered contractual qualities of the Products.

3.5 Any and all drawings, illustrations, measures, weights or other performance data related to a quotation or an offer to a Purchaser will only be binding if they are explicitly agreed in writing by Energie Group Australia.

3.6 Quotations may only be accepted as a whole; component parts of a quotation are not open to be accepted separately. Subsequent Orders are subject to further quotation.

4. Prices and Terms of Payment

4.1 The terms of payment are net cash before dispatch, unless the Purchaser has a current credit account with Energie Group Australia. The terms of payment for a Purchaser with a current credit account are net cash, free of exchange, without any deduction or set off whatsoever, thirty (30) days from the end of the month in which the Products are delivered, or are ready for delivery, or the Services are supplied. Energie Group Australia reserves the right to invoice for partial deliveries or supplies, or deliveries or supplies delayed at the Purchaser's request.

4.2 Prices quoted or accepted:

4.2.1 do not include taxes, imposts or duties. Energie Group Australia may recover from the Purchaser, and the Purchaser must pay the amount of any sales tax, customs tax, use tax, consumption tax, goods and services tax, value-added tax or any similar tax, impost or duty levied on any supplies made by Energie Group Australia to the Purchaser under or in connection with these Terms and Conditions; and

4.2.2 are "ex works" and all costs of freight and delivery from Energie Group Australia's works will be to the Purchaser's account.

4.3 Energie Group Australia reserves the right to modify its prices accordingly if there is any change in the costs of labour, materials, transport, essential services, tariffs, duties, exchange, and other costs and statutory obligations, between the date of quotation and the date of invoice. Energie Group Australia will provide proof of such cost changes at the Purchaser's request.

4.4 Energie Group Australia must agree to any reduction of cash discounts separately in writing.

4.5 The Purchaser must pay interest on any amounts in arrears. Interest will be calculated at a rate of 3% per calendar month from the due date for payment until Energie Group Australia receives payment.

4.6 Energie Group Australia may use payments to satisfy older debts, even if otherwise stated in the Purchaser's terms and conditions. Energie Group Australia will inform the Purchaser about any such set-off. In the event that the Purchaser has al-

ready incurred costs and interest, Energie Group Australia will be entitled to set-off the payment, first with costs, then with any applicable interest and finally with the principal performance.

4.7 The Purchaser will not cancel or amend any Order accepted by Energie Group Australia without Energie Group Australia's written approval.

5. Period of Delivery and Performance

5.1 Delivery will be deemed to occur when Energie Group Australia informs the Purchaser that the Products are ready for collection at Energie Group Australia's works.

5.2 Dates and periods of delivery of which Energie Group Australia will advise the Purchaser in writing only, will be regarded as best estimates, but will not be guaranteed and may be subject to extension to cover delays caused by Government priorities, strikes, lockouts, breakdowns, delays in transport, fines, late delivery of raw materials or components, or other causes beyond Energie Group Australia's control, and Energie Group Australia will accept no responsibility or liability for the consequence of any delays. In this event, Energie Group Australia will be entitled to postpone the delivery and the performance by the period of the complication plus an appropriate restarting time, or to cancel the acceptance of an Order in full or in part with respect to the part not yet fulfilled.

5.3 If a complication referred to in clause 5.2 lasts more than three months, following the setting of an appropriate additional period of time, the Purchaser may cancel that part of the Order which has not already been performed by Energie Group Australia. In the event that the period of delivery or performance is extended or in the event that Energie Group Australia is released from its obligations, the Purchaser will not be entitled to any claim for damages.

5.4 If Energie Group Australia accepts in writing responsibility for non-compliance with bindingly agreed dates and periods of delivery or performance the Purchaser shall be entitled to compensation for delay amounting to a half percent for every full week of delay, totalling a maximum of five percent of the invoice value of the Products and Services Order affected by the delay. Any and all further claims will be excluded, unless the delay is caused by Energie Group Australia's gross negligence.

5.5 Energie Group Australia may carry out partial deliveries and partial performances at any time within the period advised by it for delivery or performance.

5.6 Any delivery and performance obligations arising in relation to these Terms and Conditions will not apply to Energie Group Australia until timely satisfaction of all the Purchaser's corresponding duties. Time for payment will be of the essence of the contract.

5.7 It is the Purchaser's responsibility to provide uninhibited access to delivery sites. If in crossing or endeavouring to avoid any obstruction damage is caused to the obstruction or the goods being supplied by Energie Group Australia, then the Purchaser agrees to indemnify Energie Group Australia against all claims whatsoever for such damage. The Purchaser agrees that any price quoted by Energie Group Australia for delivery of the goods by Energie Group Australia was on the basis of uninhibited access being provided to the delivery site and in addition to any price quoted the Purchaser shall pay the price charged by Energie Group Australia for any waiting time or time incurred by Energie Group Australia in obtaining uninhibited access to the delivery site.

5.8 If the Purchaser requests Energie Group Australia to delay delivery or performance, or fails to give Energie Group Australia adequate instructions for delivery or performance, or is in delay of acceptance of delivery or performance for any other reason, Energie Group Australia may claim the damage or cost caused by such delay, including the cost of storage of Products. Upon the beginning of the delay in acceptance, the risk of accidental

deterioration or accidental loss of Products passes to the Purchaser.

6. Passing of Risk

All Products will be at the Purchaser's risk from the point of delivery as defined in clause 5. Insurance cover is the responsibility of the Purchaser, and Energie Group Australia will not be responsible for any loss or damage occurring after the point of delivery and will only arrange insurance upon written instructions from the Purchaser, and at the Purchaser's cost.

7. Liability for Defects or Shortfall

7.1 If there is any shortfall in the number of Products, or if the Products are damaged during delivery, the Purchaser will inform Energie Group Australia within three (3) days from the date of delivery. If the Purchaser does not, then Energie Group Australia will not be responsible for any loss or damage suffered by the Purchaser as a result of the shortfall or damage.

7.2 If there is a shortfall in the number of Products or if the Products are damaged during delivery, Energie Group Australia's liability will in any case be limited to the price of the Products not delivered or damaged.

7.3 No returns may be made, or will be accepted by Energie Group Australia, unless the returned Products are defective or damaged in transit. In either case, the Purchaser must first give notice under clause 7.1 before it can return the Products.

7.4 If within the warranty period applicable to a Product, as set out in Energie Group Australia's product catalogue any new Product sold by Energie Group Australia is found to be defective in materials or workmanship, or does not conform to any applicable drawings and specifications approved by Energie Group Australia, then Energie Group Australia will, at its option, either repair or provide a replacement part or Product provided that:

7.4.1 the Purchaser has given written notice to Energie Group Australia of any alleged defect immediately and in any case not later than three (3) days from the date of discovery of the defect;

7.4.2 the Purchaser has provided Energie Group Australia a reasonable opportunity to perform all appropriate tests on the Product; and

7.4.3 the defective part or Product is promptly returned to a designated Energie Group Australia service centre.

Any defective part or Product replaced will become Energie Group Australia property and the repaired or new part or Product will be delivered free to the Purchaser's site.

7.5 No separate warranty will apply to repaired Products as a whole or to parts not repaired or replaced by Energie Group Australia.

7.6 The warranties given by Energie Group Australia in clauses 7.2, 7.4 and 7.5 above do not cover:

(a) fair "wear and tear" and failures or damage not reported to Energie Group Australia within the warranty period;

(b) failures or damage due to misapplication, abuse, improper installation or abnormal conditions of operation;

(c) failures or damage due to operation, either intentional or otherwise, above or below rated capacities or in an otherwise improper manner;

(d) failures or damage resulting from Products which have been in any way tampered with or altered by anyone other than an authorised representative of Energie Group Australia;

(e) Products damaged in shipment or without the fault of Energie Group Australia; and

(f) failures or damage resulting from the incorporation of, or failure of, non- Energie Group Australia manufactured or supplied parts in the Products.

- 7.7 Energie Group Australia does not warrant any equipment of other manufacturers which is designated by the Purchaser or purchased by Energie Group Australia for resale to the Purchaser either separately or as a part of equipment manufactured by Energie Group Australia. For such equipment, the warranty established by the manufacturer of the equipment will apply.
- 7.8 When Energie Group Australia supplies Services to the Purchaser, Energie Group Australia will exercise its best skill, competence and experience to undertake the Services.
- 7.9 Energie Group Australia's liability under clauses 7.2, 7.4 or 7.5 will in no event exceed the cost of replacing or repairing the Products sold or supplying the Services again.
- 7.10 The benefits conferred by the warranties in clauses 7.2, 7.4 or 7.5 are in addition to all other rights and remedies in relation to the Products and the Services supplied or performed by Energie Group Australia which the Purchaser has under the Australian Consumer Law and similar state and territory laws, and the exceptions and limitations in clauses 7.2, 7.4 or 7.5 do not apply to such statutory rights and remedies.
- 7.11 Where the Australian Consumer Law or similar state or territory legislation implies into these Terms and Conditions any term, condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying them, then the term, condition or warranty shall be deemed to be included in these conditions of sale provided that Energie Group Australia's liability for a breach of any such term, condition or warranty, including any consequential loss which the Purchaser may sustain, will be limited, at the option of Energie Group Australia, to either replacing or repairing the Products or, in the case of Services, to supplying the Services again.
- 7.12 Except as expressly set out in these Terms and Conditions, and subject to clause 7.11:
- 7.12.1 all conditions, warranties, terms, undertakings, representations and obligations, whether expressed or implied, and whether arising under statute, common law, equity, custom, trade usage or otherwise (including any implied condition, warranty, term or representation as to the use of the Products, their weight, dimensions, capacities, colours or the correspondence of the Products with any contract description or as to merchantable quality, fitness for any purpose or safety of the Products, or operating performance where such performance is conditional on empirical factors or on the whole installation or on the individual or overall operation or on the skills of an operator), whether made known or not and any liability of Energie Group Australia to compensate or indemnify any person or persons in respect of the foregoing, are expressly negated and excluded; and
- 7.12.2 in no event will Energie Group Australia be liable for any:
- (a) expenses incurred by the Purchaser in an attempt to repair or rework any allegedly defective Product or Service;
- (b) losses, costs, expenses, liabilities and damages (including loss of profits, liabilities of the Purchaser to its customers or third persons, and any other consequential damages), whether direct or indirect and whether or not resulting from or contributed to by the default or negligence of Energie Group Australia, its agents, employees and sub-contractors, which might be claimed as the result of the use or failure of the Product sold or the Services supplied.
- 7.13 In the event that Energie Group Australia provides the Purchaser defective assembly instructions preventing the orderly assembly of a Product, Energie Group Australia will provide the Purchaser with effective assembly instruction and Energie Group Australia expressly excludes all other liability in relation to such an occurrence.
- 8. Indemnity**
- 8.1 Subject to clause 14, the Purchaser indemnifies and holds Energie Group Australia harmless from and against all liabilities, losses, damages, costs (including legal costs on a full indemnity basis) or expenses incurred or suffered by Energie Group Australia and from and against all actions, proceedings, claims or demands made against Energie Group Australia, arising in either case as a result of:
- 8.1.1 the Purchaser's failure to comply with these Terms and Conditions any laws, rules, standards or regulations applicable in relation to the Products or the use of the Products;
- 8.1.2 any use of the Products contrary to any instructions or warnings given by Energie Group Australia;
- 8.1.3 any other negligence or any breach of duty by the Purchaser;
- 8.1.4 any compliance or adherence by Energie Group Australia with any instructions by the Purchaser in relation to the Products or their manner of preparation; or
- 8.1.5 any failures resulting from the incorporation of, or failure of, non- Energie Group Australia manufactured or supplied parts in the Products.
- 9. Intellectual Property Rights**
- Energie Group Australia is the owner of certain patents and registered designs as well as other intellectual property rights, including copyright, and other technical, business or similar information (including all designs, documents and other materials relating to the Products) created by Energie Group Australia (together the "Intellectual Property Rights"). The Purchaser must not directly or indirectly manufacture or purchase from any third party the subject matter of the Intellectual Property Rights or in any way infringe the Intellectual Property Rights. The Intellectual Property Rights remain at all times the exclusive property of Energie Group Australia.
- 10. Confidentiality**
- The Purchaser must keep these Terms and Conditions confidential and must not disclose details of them to any third party without Energie Group Australia's prior written consent. The Purchaser agrees not to copy or disclose to any third party any drawings, price details, any other technical papers or any documents marked or identified as "confidential" supplied by Energie Group Australia under these Terms and Conditions.
- 11. Drawings and Specifications**
- All drawings and specifications, descriptions and other documents attached to any quotation are for tendering purposes only, and will not form the basis nor be part of any contract between Energie Group Australia and the Purchaser. Energie Group Australia retains ownership of the copyright and all other intellectual and industrial property rights in all drawings, specifications, manuals and other documentation provided to the Purchaser, and all such documents must be returned to Energie Group Australia on demand.
- 12. Retention of Title and Security**
- 12.1 The Products remain the sole and absolute property of Energie Group Australia as legal and equitable owner, and the property in and title to the Products will not pass from Energie Group Australia to the Purchaser until the Purchaser has paid Energie Group Australia in full for the Products and for all other Products and Services supplied by Energie Group Australia.
- 12.2 The Purchaser further agrees:-
- (a) to store and maintain the Products in such a manner as to show clearly that they are the property of Energie Group Australia and the

Purchaser shall be at liberty to sell the Products, in the ordinary course of business, but only as a fiduciary agent for Energie Group Australia and shall account to Energie Group Australia for all proceeds from any sale;

- (b) under this agreement Energie Group Australia may enter upon the Purchaser's premises or elsewhere without notice and with force if reasonably necessary to repossess the Products without being liable for trespass. The Purchaser shall indemnify Energie Group Australia for any loss or damage suffered by Energie Group Australia and against all claims brought against Energie Group Australia arising from Energie Group Australia repossessing the Products;
- (c) that in the event the Purchaser uses the Products in some manufacturing or construction process of its own or some third party and so as to meet payment due to Energie Group Australia under this agreement, the Purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the Products in trust for Energie Group Australia. Such part shall be deemed to equal in dollar terms the amount owed by the Purchaser to Energie Group Australia at the time of the receipt of such proceeds; and
- (d) to better secure any outstanding payment due to Energie Group Australia under this agreement, the Purchaser appoints Energie Group Australia as its attorney to collect the Products and/or to collect payment from any third party for the Products and/or Services and/or to collect payment from any third party who owes money to the Purchaser and to apply that payment against the Purchaser's account with Energie Group Australia. If payment is collected by Energie Group Australia from a third party, then the Purchaser irrevocably agrees with Energie Group Australia and with the third party that in providing this attorney the third party's liability for payment to the Purchaser in relation to the outstanding monies is reduced by the sum of the payments collected by Energie Group Australia from the third party.

12.3 For the purpose of this clause and other relevant clauses in these Terms and Conditions "PPSA" means the Personal Property Securities Act 2009 and the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA.

- (i) The retention of title arrangement in clause 12.1 constitutes the grant of a purchase money security interest by the Purchaser in favour of Energie Group Australia in respect of all present and after acquired Products supplied to the Purchaser by Energie Group Australia.
- (ii) If requested by Energie Group Australia the Purchaser and the Guarantors must immediately sign any documents, provide all necessary information and do anything else required by Energie Group Australia to ensure that Energie Group Australia's purchase money security interest or any other security interest created in favour of Energie Group Australia is a perfected security interest.
- (iii) The Purchaser and the Guarantors must not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Products supplied or any proceeds from the sale of the Products or grant any other security interest in favour of any party until Energie Group Australia has perfected its purchase money security interest and other security interests created under these Terms and Conditions.
- (iv) The Purchaser and the Guarantors must not do or permit anything to be done that may result in the purchase money security interest or any other security interest granted to Energie Group Australia ranking in priority

behind any other security interest.

- (v) To the fullest extent permitted by the PPSA the Purchaser and the Guarantors (to the extent applicable to such party) agree to contract out of the application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein shall not apply.
- (vi) The Purchaser and the Guarantors hereby waive any rights the Purchaser and the Guarantors may otherwise have to:
 - (a) receive any notices or statements the Purchaser and the Guarantors would otherwise be entitled to receive under sections of the PPSA including for the avoidance of any doubt the sections referred to in sections 115(1) and 115(7) of the PPSA;
 - (b) apply to a Court for an order concerning the removal of an accession under section 97 of the PPSA;
 - (c) object to a proposal of the Purchaser to dispose of or retain any collateral under sections 130 and 135 of the PPSA; and
 - (d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest created under this document.

12.4 The Purchaser and the Guarantors hereby in favour of Energie Group Australia charge with the due and punctual payment and the due, punctual and complete performance of all their liabilities and obligations hereunder or on any account whatsoever to Energie Group Australia all their legal and equitable interest of whatsoever nature held in any real property both present and future and each of the Purchaser and Guarantors hereby consent to Energie Group Australia lodging a caveat or caveats noting its proprietary interest herein.

12.5 The Purchaser and the Guarantors grant a security interest in all of their present and after acquired property and in all of their present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property including any debts owed to the Purchaser and the Guarantors, in favour of Energie Group Australia to secure the performance of their liabilities and obligations hereunder or on any account whatsoever.

13. Default

13.1 If any payment by the Purchaser to Energie Group Australia is overdue, in whole or in part, or the Purchaser is otherwise in default under any contract with Energie Group Australia, or the Purchaser becomes bankrupt or commits any act of bankruptcy or compounds with its creditors or has judgment entered against it in any court or, being a company, has a provisional liquidator, receiver or manager appointed or otherwise suffers some form of insolvency administration, or anything analogous or having similar effect occurs then, all sums then owing by the Purchaser to Energie Group Australia in relation to the Products or in relation to other goods supplied, or Services performed, by Energie Group Australia will become immediately due and payable and Energie Group Australia may (without prejudice to any of its other rights) recover and resell the Products and any other goods supplied by Energie Group Australia and may, for that purpose, enter upon the Purchaser's premises by its servants or agents, and Energie Group Australia is irrevocably authorised to effect such entry, including the use of such reasonable force as is necessary to effect such entry, and to use the name of the Purchaser and to act on behalf of the Purchaser, if necessary, to recover possession of the Products and any other goods supplied by Energie Group Australia and to detach the Products and

- any such other goods from any other object to which they have been attached or of which they form a constituent part. The Purchaser must provide Energie Group Australia all information and documents necessary, and otherwise assist Energie Group Australia to recover possession of the Products.
- 13.2 If Energie Group Australia recovers the Products or any other goods, it may resell the Products or any other goods recovered. If the proceeds of sale are more than the amount due to Energie Group Australia from the Purchaser, Energie Group Australia may use the balance to pay the costs of taking possession and selling the Products or any other goods. If on resale the proceeds of sale are less than the amount due to Energie Group Australia, Energie Group Australia may recover the shortfall from the Purchaser.
- 13.3 If a third party seizes Products, the Purchaser must immediately inform Energie Group Australia in writing.
- 14. Construction Modifications**
- Energie Group Australia reserves the right to modify the construction of Products at any time, however, Energie Group Australia is not obliged to carry out such modifications to Products already delivered.
- 15. Confidentiality**
- If not otherwise explicitly agreed, any and all information provided to Energie Group Australia in connection with Orders shall not be considered confidential.
- 16. Unfair Contract Laws**
- If this credit application and/or these Terms and Conditions are held to be a standard form small business contract then any clause or term which is deemed to be unfair pursuant to the Australian Consumer Law by any competent authority or the Courts, will be severed from the credit application and/or these Terms and Conditions.
- 17. General**
- 17.1 If any of these Terms and Conditions or a provision of any other agreement is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part then the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law.
- 17.2 Should there be any variation in the information supplied in this document concerning the Purchaser, the proprietorship of the Purchaser's trading name or a variation in the structure of the Purchaser's business (such as conversion to, or from, a trustee), Energie Group Australia shall forthwith be notified in writing by the Purchaser by certified mail delivered to Energie Group Australia's registered office. Unless such notification is given to Energie Group Australia, the Purchaser and the Guarantors shall remain liable to Energie Group Australia as though any Products or Services supplied by Energie Group Australia prior to such notification were supplied to, or at the request of, the original Purchaser. The Purchaser and the Guarantors agree these Terms and Conditions also binds the Purchaser and the Guarantors in relation to all Products and Services supplied to, or at the request of, the Purchaser as the proprietor (in whole or in part) or as agent of any business, and irrespective of whether the Purchaser supplied the Products and Services under the trading name of the Purchaser's business disclosed on the front page of this document.
- 17.3 If any payment made by, or on behalf of, the Purchaser to Energie Group Australia shall subsequently be avoided at law or recovered by a liquidator or trustee in bankruptcy, such payment shall be deemed not to have discharged the Purchaser's liability and in such event Energie Group Australia and the Purchaser shall be restored to the position in which each would have been had the payment not been avoided. The Guarantors agree to be liable to Energie Group Australia for the payment so avoided.
- 17.4 The Purchaser and the Guarantors agree that a variation or waiver of a term or condition under these Terms and Conditions is effective only if it is in writing and signed by Energie Group Australia. Such waiver is effective only in the specific instance and for the specific purpose it was given.
- 17.5 The Purchaser agrees and irrevocably authorises Energie Group Australia to apply, or set-off, against the Purchaser's account under these Terms and Conditions any sums which may be owed to the Purchaser by any company within Energie Group Australia group of companies.
- 17.6 The Purchaser and the Guarantors (as the case may be) warrant and agree that where they are, at the time of executing this document or at any time the Purchaser has credit with Energie Group Australia, a trustee of any trust (the "Trust"):- (a) to produce a stamped copy of the Trust deed (with all amendments) if and when requested by Energie Group Australia; (b) that they have full power and authority to execute, or continue with their obligations under, this agreement on behalf of the Trust as they are doing so in their individual capacity and in their several capacity as trustee; (c) that they shall be bound by the Terms and Conditions in their individual capacity, or further or alternatively, in their several capacity as trustee; and (d) that the assets of the Trust shall be available to meet payment of their obligations to Energie Group Australia.
- 17.7 The Purchaser and the Guarantors agree that a certificate by Energie Group Australia or any person authorised by Energie Group Australia to give the same shall be conclusive evidence as to the amount owed to Energie Group Australia by the Purchaser and the Guarantors.
- 17.8 In this document words in the singular includes the plural and visa versa, and reference to any gender includes the other genders and where applicable reference to a person includes a body corporate.
- 17.9 If any party to this document comprises two or more parties each of those parties are jointly and severally liable on the covenants and obligations herein.
- 17.10 These Terms and Conditions shall be binding upon each party that has executed it notwithstanding the failure of any other party named as a party to execute it or the avoidance or unenforceability of any part of these Terms and Conditions.
- 17.11 None of the provisions of these Terms and Conditions will merge in or upon the execution of this or any other agreement, document, act, matter or thing and will continue to remain in full force and effect for so long as is necessary to give effect to the provisions of these Terms and Conditions.
- To give effect to their obligations under these Terms and Conditions the Purchaser and the Guarantors hereby irrevocably appoints any solicitor for Energie Group Australia, from time to time, as its attorney to do any act or thing which they are required to do under these Terms and Conditions.
- 17.12 These Terms and Conditions shall be governed and construed in accordance with the laws of Western Australia and the parties submit to the jurisdiction of the Courts of Perth, Western Australia and waives any right to object to any proceedings being brought in those Courts.
- 17.13 The Purchaser must not transfer, assign or sub-contract its obligations under these Terms and Conditions without Energie Group Australia's prior written consent.
- 17.14 Any notice required under these Terms and Conditions must be in writing addressed to the other party at its registered office or principal place of business or any other address notified by the receiving party to the party giving the notice.