

SUPPLY TERMS AND CONDITIONS**Recitals**

- A. ASI has agreed to supply the Goods and/or Services to the Customer.
- B. This Agreement sets out the terms on which the parties agree that ASI will supply the Goods and/or Services to the Customer.

1 Definitions and Interpretation**1.1 Definitions**

In this Agreement:

Agreement means this document and the Quotation.

ASI means Alliance Electric Pty Ltd (ACN 001 524 867), trading as Alliance SI.

ASI Representative means the person identified as such in the Quotation or such other person notified to the Customer by ASI.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in Sydney; or
- (b) 27, 28, 29, 30 or 31 December.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated as confidential on its disclosure; or
- (c) the receiving party knows or ought to know is confidential.

Consumer has the meaning in the Australian Consumer Law.

Customer means the customer named in the Quotation.

Customer Representative means the person identified as such in the Quotation or by the Customer by written notice to ASI.

Date of Agreement means the date identified as such in the Quotation.

Defaulting Party has the meaning in clause 15.

Defects Liability Period means the period identified as such in the Quotation or, if no such period is identified:

- (a) 52 weeks in respect of Goods, commencing on the date of Delivery; or
- (b) 90 days in respect of Services, commencing on the date of their completion.

Delivered means the point when, where the Quotation states that ASI is:

- (a) to unload the Goods, the Goods have been delivered to and safely unloaded at the Delivery Point; or
- (b) not required to unload the Goods, the Goods have been delivered to the Delivery Point and are ready for unloading.

Delivery Date means the date identified as such in the Quotation, as adjusted in accordance with this Agreement.

Delivery Point means the point identified as such in the Quotation.

Force Majeure Event means each of the following, including their effects, to the extent they are beyond the reasonable control of the affected party and are not caused or contributed to by the affected party or any of its Personnel:

- (a) war, invasion, act of foreign enemy, act or terrorism, hostilities, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or civil commotion, riot or disorder;
- (b) confiscation by order of any authority or government;
- (c) mass sickness or illness, including the direct and indirect effects of COVID-19 and associated changes in Law or new Laws; and
- (d) earthquake, fire, flood, cyclone, lightning or hurricane.

Goods means, subject to clause 3.1(c), the goods identified in the Quotation.

Intellectual Property Rights means any and all intellectual property rights and other proprietary rights in relation to inventions, innovations, ideas, patents, applications for patents, copyright, designs, trademarks, utility models, designs, rights in relation to circuit layouts and circuit layout designs, mask rights, rights in relation to technologies in development, trade secrets, know-how and confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organization of July 1967, including any right to register those rights.

Laws means all acts, regulations, by-laws, orders, licences, approvals and authority requirements and fees payable in connection with any of them.

Personnel means a party's employees, agents, officers and contractors, excluding ASI in the case of the Customer.

Price means the price set out or determined in accordance with the Quotation, as adjusted in accordance with this Agreement.

Qualifying Cause of Delay means:

- (a) a breach of this Agreement by the Customer or any of its Personnel;
- (b) an act or omission of the Customer or any of its Personnel that is not expressly permitted by this Agreement;
- (c) the direction of a variation by the Customer other than for ASI's convenience;
- (d) inclement weather and its effects;
- (e) a direction pursuant to clause 1.3(b);
- (f) the occurrence of a Force Majeure Event;
- (g) a change to or the introduction of a new Law or Customer policy or procedure with which ASI must comply;
- (h) a deficiency in any good or work with which a Good or Service interfaces;
- (i) an error or omission in any information or material supplied to ASI by or on behalf of the Customer; and
- (j) suspension pursuant to clause 13.3(b).

Quotation means a quotation issued by ASI to the Customer in respect of the Goods and/or Services.

Relevant Failure has the meaning in clause 17.2.

Services means the services identified in the Quotation.

Variation Request has the meaning in clause 9.1(a).

WHS Laws means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulations 2017* (NSW) and similar Laws in other relevant jurisdictions.

1.2 Interpretation

In this Agreement:

- (a) a reference to a document includes all variations to or replacements of it;
- (b) a reference to a person includes its executors, administrators, successors, substitutes and permitted assigns;
- (c) a reference to time is to time in Sydney;
- (d) if a period is specified, it is to be calculated exclusive of the day on which the relevant notice is given or event occurs;
- (e) if the day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur, on or by the next Business Day (as appropriate);
- (f) headings do not form part of and are not to be used in interpreting this Agreement;
- (g) a reference to 'dollar' or '\$' is a reference to Australian dollars;
- (h) measurements must be in the legal units of measurement of Australia;

- (i) all communications between the parties must be in English;
- (j) no term of this Agreement will be construed against a party on the basis that this Agreement or such term was put forward by that party; and
- (k) unless stated otherwise in this Agreement, ASI and the ASI Representative may exercise their discretions and rights in their absolute discretion.

1.3 Ambiguity or discrepancy

- (a) If either party discovers any ambiguity or inconsistency in or between any document(s) that form this Agreement, it must promptly advise the ASI Representative in writing.
- (b) Following its receipt of a notice under clause 1.3(a), the ASI Representative must give the parties a direction as to the interpretation that applies and they must comply with such direction.

1.4 Application of this Agreement

Notwithstanding anything contained in any correspondence between the parties or purchase order or similar document issued to ASI by or on behalf of the Customer, this Agreement:

- (a) constitutes the entire agreement between the parties in relation to its subject matter;
- (b) supersedes all prior correspondence between the parties or purchase order or similar document issued to ASI by or on behalf of the Customer; and
- (c) is accepted by the Customer on the earliest of the Customer:
 - (i) returning a signed copy of the Quotation to ASI; or
 - (ii) agreeing, verbally or in writing, that ASI will supply some or all of the Goods and/or Services.

2 Engagement

ASI must Deliver the Goods and perform the Services in accordance with this Agreement and the Customer must pay ASI the Price for doing so.

3 Representations and Warranties

3.1 General

The Customer warrants to ASI and repeats on each day of the term of this Agreement that, in entering into this Agreement, it:

- (a) did not rely on any representation from ASI other than those expressly included in this Agreement;
- (b) does not do so as the trustee of a trust; and
- (c) accepts that:
 - (iii) where necessary as a direct result of a supply shortage, ASI may alter the design or specification of any Good by providing no less than 5 Business Days' prior written notice to the Customer and without otherwise affecting this Agreement;
 - (iv) any performance figures included in this Agreement are based on ASI's experience, but may not be achieved by the Customer and ASI has no liability to the Customer for any such failure unless specific performance figures are expressly guaranteed in the Quotation;
 - (v) all specifications, drawings, data and dimensions of Goods are approximations and ASI has no liability to the Customer for any differences unless specific parameters are expressly guaranteed in the Quotation; and
 - (vi) ASI does not warrant the accuracy or completeness of any information or other material provided to the Customer by or on behalf of ASI under or in relation to this Agreement.

3.2 Customer acknowledgments

The Customer acknowledges and agrees that ASI enters into this Agreement relying on the warranties in clause 3.1 and would not have done so without them.

3.3 ASI warranties

ASI warrants to the Customer that all:

- (a) Goods will, on their Delivery, comply with this Agreement; and
- (b) Services will, on their completion, comply with this Agreement.

4 Delivery

4.1 General

Unless Delivery by the Delivery Date is expressly warranted by ASI in the Quotation:

- (a) the Delivery Date is an estimated date only;
- (b) ASI must use reasonable endeavours to achieve Delivery by the Delivery Date; and
- (c) any failure by ASI to achieve Delivery by the Delivery Date does not entitle the Customer to bring any claim against ASI or terminate this Agreement.

4.2 Staged Delivery

ASI reserves the right to Deliver the Goods in stages subject to ASI providing the Customer with prior notice to this effect.

4.3 Access and conditions at Delivery Point

The Customer must:

- (a) supply ASI with all access needed to efficiently and safely Deliver the Goods to and perform the Services at the Delivery Point; and
- (b) ensure that conditions at the Delivery Point are such that ASI can efficiently and safely Deliver the Goods to and perform the Services at the Delivery Point.

4.4 Inspection and acceptance

- (a) ASI is not liable for any:
 - (vii) shortfall in Goods Delivered and/or Services performed; or
 - (viii) defects in Goods Delivered and/or Services performed that were present on their Delivery or supply,
 unless the Customer notifies the ASI Representative of such issue, including full detail of all relevant facts, within 5 Business Days after the date of Delivery or performance of the relevant Services.
- (b) If the Customer does not issue a notice in accordance with clause 4.4(a), it will be deemed to have accepted the relevant Goods and/or Services on the expiry of the period included in that clause.

5 Delay

5.1 Extension of time

If ASI:

- (a) is or will be delayed in Delivering Goods and/or performing Services by a Qualifying Cause of Delay; and
- (b) issues a written notice to this effect to the Customer Representative detailing the cause and extent of the delay,

the Delivery Date, and all other relevant dates, will be automatically extended by a period sufficient to overcome the effects of the delay.

5.2 Delay damages

If ASI:

- (a) is entitled to an extension of time as a result of the occurrence of an event listed in any of paragraphs (a) – (c), (e) or (g) – (j) of the definition of Qualifying Cause of Delay; and
- (b) issues a written claim for delay damages to the Customer Representative detailing the costs reasonably incurred by ASI as a direct result of the delay,

all such costs will be due and payable to ASI by the Customer within 10 Business Days after the date of such claim.

6 Force Majeure Event

If a party is unable, wholly or in part, by reason of a Force Majeure Event, to perform an obligation under this Agreement and that party:

- (a) provides the other party within 5 Business Days after the commencement of the relevant Force Majeure Event with details of the event, all affected obligations and, to the extent known, likely extent to which it will be unable to perform or be delayed in performing such obligations; and
 - (b) uses reasonable endeavours to mitigate the effects of the Force Majeure Event,
- all affected obligations (excluding payment obligations) are suspended to the extent they are adversely affected by the Force Majeure Event.

7 Inspection and testing

Any inspection or testing of Goods or Services by or on behalf of the Customer must be performed in:

- (a) accordance with ASI's recommended practices; and
- (b) the presence of the ASI Representative or his or her nominee.

8 Risk and title

8.1 Risk

Risk in Goods passes to the Customer on their Delivery.

8.2 Title

- (a) Title in Goods passes to the Customer on full payment to ASI for them.
- (b) In the period between Delivery and title passing in accordance with clause 8.2(a), the Customer must:
 - (ix) store the Delivered Goods at the Delivery Point or at such other place agreed by the ASI Representative in writing;
 - (x) mark all Delivered Goods such that they are clearly identifiable as ASI property;
 - (xi) only use Delivered Goods for the purpose for which they are supplied;
 - (xii) if it receives payment from a third party for some or all Delivered Goods, hold on trust for ASI the amount of such payment;
 - (xiii) except as provided in clause 8.2(b)(xii), not grant anyone any interest in or over any Delivered Goods or deal with them in a way that will or may prejudice any of ASI's rights under this Agreement or the *Personal Property Securities Act 2009* (Cth); and
 - (xiv) insure all Delivered Goods:
 - (A) at the Customer's cost; and
 - (B) for their replacement value and against all risks.

9 Variations

9.1 Variation request

- (a) The Customer may, by written notice titled 'Variation Request', request that ASI provide a proposal to vary the Goods and/or Services.
- (b) Within 7 Business Days after its receipt of a Variation Request, ASI must confirm to the Customer:
 - (xv) whether the proposed variation can be effected; and
 - (xvi) if it can be, the time, cost and other implications of giving effect to it.
- (c) If the Customer accepts a proposal submitted by ASI in accordance with clause 9.1(b), this Agreement will be amended in accordance with such proposal or as otherwise agreed by the parties in writing.
- (d) If ASI:
 - (xvii) receives a direction from the Customer which it considers to be a direction to carry out a variation; and
 - (xviii) notifies the Customer of this belief prior to giving effect to the direction,

ASI is not obliged to comply with the direction until its effects are agreed by the parties in writing.

10 Safety

- (a) The Customer must ensure that all places made available by the Customer for use by ASI and its Personnel are safe and comply with all WHS Laws.
- (b) Without limiting clause 10(a), the Customer must:
 - (xix) notify the ASI Representative immediately of all work health and safety matters arising out of, or in any way in connection with, the performance of this Agreement; and
 - (xx) exercise a duty of good faith to ASI in performing this Agreement to enable ASI to discharge its duties under the WHS Laws.

11 Intellectual Property Rights

11.1 General

- (a) Nothing in this Agreement affects the ownership of either party's Intellectual Property Rights.
- (b) On and from the Customer's payment of all amounts payable under this Agreement, ASI grants the Customer a royalty free, perpetual and non-exclusive licence to use all Intellectual Property Rights incorporated in the relevant Goods and/or Services for the purposes contemplated in this Agreement.

11.2 Restrictions on use

The Customer must not decompile, disassemble, reverse engineer, manufacture, duplicate or modify any Good or Service or component thereof, nor reproduce, copy or disclose, nor permit others to reproduce, copy or disclose, any Good or Service without the prior written consent of the ASI Representative.

11.3 Customer Intellectual Property Rights

The Customer:

- (a) warrants to ASI and repeats on each day of the term of this Agreement that it is entitled to lawfully provide ASI with all things provided to ASI by or on behalf of the Customer in relation to this Agreement and grant the licence in clause 11.3(b);
- (b) grants to ASI a royalty-free, worldwide, non-exclusive, perpetual, transferable and irrevocable licence (including a right to sublicense) to use, publish, copy, modify and adapt all Intellectual Property Rights incorporated in things of the type contemplated in clause 11.3(a) for all purposes contemplated in this Agreement; and
- (c) must indemnify ASI from and against all loss and damage suffered or incurred by ASI as a result of a breach of this clause 11.3 by the Customer.

12 Defects

12.1 Rectification

At any time prior to the expiry of the Defects Liability Period, the Customer may notify the ASI Representative of a defect in a Good or Service and, unless ASI disagrees with the notice, ASI must, at its election and within a reasonable period thereafter, either:

- (a) repair or replace the relevant Good or refund its purchase price; or
- (b) reperform the relevant Service or refund its purchase price.

12.2 Acknowledgements

To the fullest extent permitted by Law, the Customer acknowledges and agrees that:

- (a) ASI is not liable for any of the following:
 - (i) replacement or repairs required as a result of misuse, modification or lack of maintenance by others;
 - (ii) deterioration or consumption as a result of normal use (such as lamps, bulbs, fuses and batteries); and
 - (iii) products, materials or parts supplied or manufactured, or work performed, by or on behalf of the Customer;
- (b) second hand Goods are provided on an 'as is' basis and not subject to any warranties unless expressly stated otherwise in the Quotation or mandated by Law; and

- (c) with the exception of those expressly included in this Agreement, all terms, conditions, warranties and guarantees implied by Law are excluded to the fullest extent possible.

13 Payment

13.1 Payment

- (a) ASI will claim payment of the Price progressively by issuing tax invoices to the Customer that detail the Goods to be Delivered or Delivered and Services to be performed or performed since the last tax invoice was issued.
- (b) The Customer must pay ASI the amount claimed in a tax invoice within 30 days after the date on which it is issued by ASI and in Australian dollars.

13.2 Taxes and GST

- (a) Subject to clauses 13.2(b) and (c), ASI must pay all taxes relevant to its performance of this Agreement.
- (b) Each party warrants to the other that it is registered for GST and must immediately notify the other if it ceases to be so registered.
- (c) If consideration given by a party (**Payer**) in connection with this Agreement does not include GST and is consideration for a taxable supply for which the party who makes the supply (**Supplier**) is liable for GST, the Payer must pay the Supplier an additional amount equal to the prevailing rate of GST.

13.3 Non-payment by Customer

If the Customer fails to pay ASI an amount due and owing under or arising out of this Agreement:

- (a) the Customer must pay ASI interest on that amount at the then current Westpac Business Overdraft rate; and
- (b) ASI may immediately suspend Delivery of the Goods and/or performance of the Services by written notice to the Customer, until such time as all outstanding amounts are paid to ASI.

14 Dispute resolution

- (a) If a dispute arises under or in connection with this Agreement, either party may issue a notice to the other setting out details of the dispute.
- (b) Within 10 days after a notice is issued in accordance with clause 14(a), senior representatives from each party must meet to attempt to resolve the dispute.
- (c) If a dispute is not resolved within 15 days after the meeting required by clause 14(b), either party may commence litigation to resolve it.
- (d) Nothing in this clause 14 prejudices the right of a party to seek injunctive or urgent relief.

15 Default and Termination

A party may terminate this Agreement by written notice to the other (**Defaulting Party**) if the Defaulting Party:

- (a) breaches this Agreement and fails to remedy such breach within 10 days after receiving written notice from the other party to do so;
- (b) breaches a material term of this Agreement that is incapable of remedy; or
- (c) to the fullest extent permitted by Law, suffers any of the following events:
- it makes a statement or informs the other party in writing, or creditors generally, that it is insolvent or financially unable to proceed with this Agreement;
 - execution is levied against it by a creditor;
 - notice is given of a meeting of its creditors with a view to the Defaulting Party entering into a deed of company arrangement;
 - it enters into a deed of company arrangement with its creditors;
 - a controller or administrator is appointed in respect of it;

- an application is made to a court for its winding up and it is not stayed within 14 days thereafter;
- a winding up order is made in respect of it;
- it resolves by special resolution that it be wound up voluntarily; or
- a mortgagee of any of its property takes possession of that property.

16 Confidentiality

- (a) Subject to clause 16(b), a party must not, without the prior written consent of the other party's Representative, divulge or permit its Personnel to divulge (other than to properly perform this Agreement) any Confidential Information of the other party.
- (b) Clause 16(a) does not apply to Confidential Information of a disclosing party:
- made public through no default of the receiving party or any of its Personnel;
 - required to be disclosed by Law; or
 - to a court in the course of proceedings to which the receiving party is a party.

17 Limitation of liability

17.1 Indirect loss

To the fullest extent permitted by Law, neither party has any liability for any of the following types of loss or damage under or arising out of this Agreement:

- loss of revenue, use, production, goodwill, profit, data, business, contract or anticipated savings;
- increased financing or operating costs; or
- other purely financial or economic or special or indirect loss or damage.

17.2 General

- (a) If the Customer is not a Consumer, to the fullest extent permitted by Law, ASI's aggregate liability under or arising out of this Agreement or any Law is capped at the Price.
- (b) If the Customer is a Consumer, ASI's:
- liability for any failure to comply with a guarantee implied by the Australian Consumer Law is limited as follows:
 - if the failure cannot be remedied or is a 'major failure' under the Australian Consumer Law (**Relevant Failure**), ASI's liability is as stated in the Australian Consumer Law in respect of the Relevant Failure; or
 - if the failure is not a Relevant Failure then, at ASI's election, if the failure is in respect of:
 - Services, ASI's liability is limited to the resupply of the relevant Service, payment of the cost of having the Service resupplied or refunding all amounts paid to it by the Customer in respect of the Service; or
 - Goods, ASI's liability is limited to replacing the Good, supplying an equivalent good, repairing the Good, payment of the cost of replacing the Good or having it repaired or refunding all amounts paid in respect of the Good; and
 - aggregate liability to the Customer in all other instances under or arising out of this Agreement or any Law is capped at the Price.

18 Notices

- (a) A notice under this Agreement is only effective if it is in writing, signed by the party's Representative, addressed to the other party's Representative and left at or mailed or emailed to the addressee's address in the Quotation or such other address notified to the other party in writing by the addressee.

- (b) If a notice is:
- a. left at the addressee's address in the presence of a member of its Personnel between 9:00am and 5:00pm on a Business Day, it is taken to have been immediately received;
 - b. sent by mail, it is taken to have been received 4 Business Days after posting; or
 - c. sent by email, the *Electronic Transactions Act 2000* (NSW) applies to determine when it is received.

19 Subcontracting

ASI may subcontract the performance of any of its obligations under this Agreement without the Customer's consent, but is liable to the Customer for the acts and omissions of its Personnel as if they were those of ASI.

20 Waiver

Nothing in this Agreement will be waived, discharged or released unless it is done so in writing.

21 Governing Law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

22 Giving effect to this Agreement

Each party must do everything reasonably necessary to give effect to this Agreement.

23 Invalidity and enforceability

The invalidity or unenforceability of any term of this Agreement does not affect the validity or enforceability of any other term of this Agreement and the invalid or unenforceable term is severable.

24 Amendment

This Agreement may only be amended by a document signed by or on behalf of each party.

25 Survival

This clause 25 and clauses 1, 3.1, 3.2, 4.4, 5.2, 6, 8, 11, 12.2, 13.3, 14 and 16 - 24 survive the expiry or termination of this Agreement.