

Standard Terms

For the provision of Services by KHS Energy Pty Ltd ACN 668 388 805 (**we/us/our**).

These Standard Terms (**Terms**) and our proposal document (**Proposal**) form the basis of our agreement with you (collectively the **Agreement**) and are our offer of Services to you.

1. Acceptance

You accept our offer if after receiving our Proposal you confirm your acceptance of it or request that we perform the work detailed in it.

2. Proposal

- (a) Our Proposal may take different forms and may also be made up of separate parts, which are to be taken as joined and to form one single document.
- (b) You must tell us immediately if you disagree at any time with anything contained in our Proposal or if you think we have misunderstood your requirements. If you do not let us know, we will continue carrying out the work as per the Proposal.
- (c) If there is any inconsistency between these Terms and our Proposal, our Proposal will prevail to the extent of that inconsistency.

3. Variations

- (a) Either party may request variations to the Services at any time. If both parties agree to the variation in writing, then our Proposal will be updated to reflect the change, which will then be deemed to form part of the Agreement.
- (b) We may also reasonably update the Proposal where any of our Assumptions are proven to be incorrect.

4. Contacts

- (a) Our Proposal will detail who will be responsible for the delivery of our Services and their contact information, however from time to time it may be necessary for us to substitute other Personnel to deliver the Services.
- (b) You must assign a contract administrator to manage your receipt of the Services and ongoing dealings with us. You agree that the contract administrator has your authority to make decisions regarding the Services and this Agreement on your behalf.

5. Services

5.1 Provision of Services

We will provide our Services in:

- (a) a professional manner with due care, skill and diligence; and
- (b) in accordance with these Terms and as set out in our Proposal.

5.2 Access

- (a) We will only access your Premises, Sites and Systems for purposes approved in advance by you.
- (b) Where we access your Premises and Sites, you must:
 - (i) provide adequate and safe facilities for us when we work at your premises.
 - (ii) ensure that our Personnel are appropriately inducted, trained and supervised in relation to:
 - (A) health safety and environment (**HSE**) risks associated with provision or performance of the Services from your Sites or Premises;
 - (B) procedures required to manage those risks; and
 - (C) immediately notify us of any incidents that occur in relation to our Personnel during the provision of the Services.

5.3 Your responsibilities

- (a) To enable us to properly perform the Services in accordance with this Agreement, you must promptly provide us with all reasonable:
 - (i) information, assistance, data, resources, records, materials or access; and
 - (ii) access to Personnel within your organisation that we need to interact with in order to provide our Services.
- (b) You acknowledge that our Proposal assumes that:
 - (i) the information you provide to us will be accurate, complete and not misleading; and
 - (ii) you will comply with your obligations under (a).

6. Delay

- (a) Our Delivery Plan is an estimate only and you agree that we are not liable for any delay in or change to it. We will take reasonable steps to mitigate and minimise delay on our part and the impact such delay may cause.
- (b) If we become aware of any delay (or likely delay) in delivery, we will endeavor to promptly notify you

of the details of the delay and provide you with a revised Delivery Plan.

- (c) Subject to clause 19.7, if you fail to adhere to any due dates or otherwise protract our delivery of Services, resulting in designated Personnel being underutilised, any additional costs incurred by us will be your responsibility.

7. Engagement of third parties

7.1 We may engage third parties

We may in our sole discretion subcontract any part of our Services to a third party without notice to you and without your consent.

7.2 Our engagement of third parties

We will use our best endeavours to ensure that third parties that we engage in the performance of the Services:

- (a) are competent and professional;
- (b) are bound by the intellectual property and confidentiality provisions of this Agreement or otherwise to provisions equivalent in effect;
- (c) have the qualifications and experience necessary to ensure full and proper performance of the duties allocated to them; and
- (d) do not breach or cause us to breach any of our obligations under this Agreement.

8. Third party software

- (a) As part of our Services we may recommend, install, implement, train and support third party software solutions (**Software**).
- (b) You acknowledge and agree that:
 - (i) you have had an opportunity to obtain, read and understand the license terms and conditions relating to your use of any such Software (**Software License**);
 - (ii) you are solely responsible for:
 - (A) your compliance with the Software License; and
 - (B) all fees and costs relating to your access and use of the Software; and
 - (iii) we will not be responsible for any Loss that you suffer as a consequence of interruptions or malfunctions with the Software.

9. Intellectual property

9.1 Intellectual property rights

Unless otherwise specified in the Proposal:

- (a) each party retains all right, title and interest in and to its pre-existing IPR's;
- (b) we own all IPR's in the Project Materials and the Deliverables;
- (c) we grant you an irrevocable, royalty free license to use and exploit the IPRs in the Deliverables and Project Materials supplied to you for the purposes of you developing your own energy strategy and energy management capabilities (**Objective**);
- (d) nothing in these Terms prohibits us from using our pre-existing IPR's to provide Services to third parties, even if they are the same or substantially the same as those provided to you; and
- (e) you specifically agree that you must not deal with the Deliverables or the Project Materials supplied to you in any way other than with respect to the Objective, and must not copy, reproduce, license or sublicense the Deliverables, the Project Materials or Deliverables in relation to any other aspect of your business nor deploy or commercialise them in any way or allow any other person to do so.

9.2 Third party rights

You must ensure that we are permitted to use any third-party information or IPR's that you provide to us for use in the provision of our Services.

10. Fees, charges and payments

10.1 Service Fees

As consideration for our delivery of the Services, you agree to pay us the Service Fees.

10.2 Initial deposit

We may require you to make payment of an initial deposit, in accordance with our Proposal, before we commence the provision of our Services. The initial deposit will be applied by us to Services rendered, following the issue of our invoice/s to you.

10.3 Scope and fees

Services we provide on a fixed fee basis will be provided strictly in accordance with the scope of work detailed in our Proposal.

10.4 Expenses

You must pay any costs and reasonable out-of-pocket expenses incurred by us which are necessary to provide our Services (**Expenses**), as set out in our Proposal.

10.5 Invoicing

We will invoice you for the Service Fees and Expenses in accordance with our Proposal or where unspecified, each calendar month that we provide Services. We will ensure each invoice contains sufficient detail to enable

you to reference the Services and corresponding Service Fees.

10.6 Payment

- (a) You must pay us all amounts outlined in our invoice in the manner reasonably nominated without set-off, counter-claim, holding or deduction.
- (b) Subject to 10.7, if you fail to pay any of our fees in accordance with sub-clause (a), we may charge you:
 - (i) for all costs and expenses incurred by us in recovering our outstanding fees from you; and
 - (ii) compound interest at a rate of 10% per annum on the overdue amount which will begin accruing on the first day that payment is overdue.

10.7 Disputed fee

- (a) If you dispute the whole or any portion of the amount claimed in an invoice, you must pay the portion of the invoice which is not in dispute (in accordance with sub-clause 10.6) and provide notice to us within 7 days of receipt of the invoice your reasons for dispute (**Invoice Notice**).
- (b) Upon receipt of your Invoice Notice, we will within a reasonable time provide you with evidence substantiating the Service Fees and Expenses and addressing your reasons of dispute, to enable a prompt and amicable resolution.
- (c) If the dispute cannot be resolved within 7 days of our substantiation under sub-clause (b), the dispute must be referred to the dispute resolution procedure in clause 12.

10.8 GST

- (a) Unless otherwise expressly stated in our Engagement Documentation, all amounts payable to us under this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this engagement and GST has not been accounted for in determining the consideration payable for the supply, then we may recover from you an amount on account of GST. That amount is equal to the value of the supply calculated in accordance with the *A New Tax System (Goods and services Tax) Act 1999* (Cth) multiplied by the prevailing GST rate.

11. Confidentiality, privacy and data security

11.1 Recipient must keep Confidential Information confidential

Each party must:

- (a) keep confidential all Confidential Information;
- (b) only use Confidential Information for the purpose of providing or receiving (as the case may be) the Services; and
- (c) procure that its employees and contractors comply with sub-clauses (a) and (b).

11.2 Disclosure exceptions

The obligations in clause 11.1 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (c) where disclosure is required for any quality assurance or insurance purposes;
- (d) to the extent necessary to receive professional (legal or financial) advice;
- (e) to any disclosure agreed in writing between the parties; or
- (f) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this Agreement.

11.3 Use of client's details

You agree that we may publish your branding on our website or other advertising medium representing you as our client for the purposes of advancing our own publicity, provided we:

- (a) first obtain your consent to do so; and
- (b) comply with the confidentiality obligations contained in sub clauses 11.1 and 11.2.

11.4 Privacy

We will:

- (a) comply with the *Privacy Act 1988* (Cth) and any other applicable privacy laws; and
- (b) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause you to breach any Australian privacy law.

11.5 Use of Company Data

You grant us a licence to use the Company Data for the purpose of us providing the Services under this Agreement, including the right to use, reproduce, modify and create derivative works of the Company Data for that purpose.

11.6 Data security requirements:

If we deal with any of your Company Data, we must:

- (a) comply with those policies relating to data security you have provided to us along with any reasonable requirements you make from time to time;
- (b) treat your Company Data as Confidential Information;
- (c) take reasonable steps to restore any Company Data that is lost, destroyed, corrupted or altered by us in connection with the provision of the Services;
- (d) comply with any reasonable direction from you with respect to remedying or addressing any loss or unauthorised use or access to your Company Data;
- (e) inform and co-operate with you in the event of any risk regarding the security of your Company Data; and
- (f) comply with any additional data security requirements set out in the Proposal.

12. Disputes

- (a) If a dispute (**Dispute**) arises between the parties to this Agreement which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
- (b) During the period of 10 business days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.
- (d) The mediator must be agreed on by the parties within 10 business days after the Dispute Notice is given to the parties and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
- (e) The mediation concludes when:
 - (i) all the parties agree in writing on a resolution of the Dispute; or
 - (ii) a party, not earlier than 20 business days after appointment of the mediator, has given 5 business days' notice to the other parties and to the mediator, terminating the mediation, and that 5 business days has expired without all the parties agreeing in writing on a resolution of the issue.

13. Limitation of liability

- (a) Unless otherwise required by law, our liability for damages arising from any breach of this Agreement or any issue with the Services or Deliverables we have provided in relation to it, in contract, tort or equity are limited to the amount that you have paid to us under this Agreement.
- (b) To the maximum extent permitted by law, we will not be liable or responsible for any loss of profit, loss of contract, loss of goodwill, loss of opportunity or any other consequential loss incurred by you or any other person whether directly or indirectly related to our engagement under this Agreement.
- (c) We will not be liable for any part of our Services or Deliverables that are conditional upon Assumptions where further information or events make those Assumptions incorrect.

14. Indemnity

14.1 Indemnity

You agree to indemnify us and keep us indemnified against any Loss that may be incurred by us arising from or in connection with:

- (a) any breach or default by you of this Agreement;
- (b) a negligent act or omission by you or by a party you are responsible for;
- (c) your failure to comply with any law;
- (d) any Claim made against us by any third party in connection with the information or documents that you have provided to us; or
- (e) the failure of a party you are responsible for in complying with any law or the stipulations of this Agreement.

14.2 Limitation

You are not liable pursuant to clause 14.1 to the extent that any Claim or Loss occurs as a result of any negligent act or omission caused by us, or our failure to comply with material obligations of this Agreement.

15. Insurance

For the Duration, we must maintain:

- (a) professional indemnity insurance with cover of AUD\$2m; and
 - (b) product and public liability cover of AUD\$5M,
- and will promptly provide a certificate of currency relating to any of these policies upon your request.

16. Disclaimer

- (a) You may have rights under statutory consumer protection laws which cannot be excluded or

modified and the exclusions and limitations of liability in this Agreement are subject to any rights you have under such laws.

- (b) Subject to (a) and to the extent permitted by law all representations, warranties or other provisions implied or imposed under any law, are excluded. Subject to our obligations under clause 5.1, we do not warrant that the Services will be delivered free of any interruptions, delays or errors.

17. Term and termination

17.1 Duration of Agreement

This Agreement commences on the date of your acceptance under clause 1 and continues until all Services and Deliverables specified in the Proposal are completed and all payments owed to us are received (**Duration**).

17.2 Termination for breach

- (a) If either party breaches any of these Terms and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).
- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this engagement immediately by notice in writing to the party in breach.

17.3 Consequences of termination

- (a) Following termination you must:
 - (i) promptly pay all Expenses that have been incurred by us to date in accordance with clause 10.4 and all outstanding Service Fees in accordance with clause 10.6 that are not subject to dispute under clause 10.7; and
 - (ii) return or delete all of our Confidential Information that has been provided to you during the provision of our Services.
- (b) Following termination we must:
 - (i) refund you the balance of any money that you have paid in advance, once we have set-off all of our outstanding Service Fees and Expenses; and
 - (ii) return or delete all of your Confidential Information that has been provided during the provision of our Services, except for one

copy where required for quality assurance or insurance purposes.

18. Notices

Any notice given under or in connection with this engagement:

- (a) must be in legible writing and in English;
- (b) must be addressed to a party's contact address as shown on the Proposal or as otherwise notified by a party to the other party from time to time;
- (c) must be:
 - (i) delivered to that party's address;
 - (ii) sent by pre-paid mail to that party's address;
 - (iii) transmitted by facsimile to that party's address; or
 - (iv) sent by email to that party's email address; and
- (d) will be deemed to be received by the addressee:
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by post, on the third business day after the day on which it is posted, the first business day being the day of posting;
 - (iii) if sent by facsimile, on the business day on which the notice is received by the recipient's facsimile receiving facility, and a correct and complete transmission report is received; or
 - (iv) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

19. General matters

19.1 Interpretation

In interpreting this document:

- (a) headings are for convenience only and will not affect interpretation of this Agreement;
- (b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- (c) a reference to a legislation or other law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and

- (e) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Corporations Act 2001* have the meaning given in that Act, unless the context otherwise requires.

19.2 Survival and essential terms

- (a) Clauses 8, 9, 10, 11, 12, 13, 14, 17.3, 19.5 and 19.10 and are taken to survive this Agreement.
- (b) Clauses 5, 10 and 11 are essential terms of this Agreement.

19.3 Amendments

Any amendments to these Terms must be made in writing or if agreed verbally between us, must be confirmed in writing within a reasonable time after such verbal agreement.

19.4 Assignment

- (a) Subject to clause 19.4(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another company, business or otherwise sell or dispose of our business, we may transfer your matter, including all materials, personal information, confidential information and ideas supplied by you, to that other company, business or other entity, provided they agree to be bound on terms equivalent to those contained in this Agreement.
- (c) You also hereby consent to us assigning, novating or transferring any of our rights or obligations under this Agreement.

19.5 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

19.6 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

19.7 Force majeure

A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay:

- (a) is caused by a circumstance not within the reasonable control of the party; and

- (b) could not have been reasonably avoided, prevented or circumvented by the party.

19.8 Waiver

The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

19.9 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

19.10 Severability

Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which will remain in force.

20. Acknowledgement

You acknowledge that:

- (a) you have read, understood and agreed to be bound by these Terms and the Agreement;
- (b) you have received and will retain your own copies of these Terms and our Proposal; and
- (c) you have been informed by us that you should seek independent advice in relation to these Terms prior to accepting offer of Services.

21. Definitions

In these Terms the following definitions apply:

Assumptions means:

- (a) any qualifications or suppositions detailed relating to the Services or Deliverables set out in the Proposal; and
- (b) the expectations we have relied upon as set out in clause 5.3(b).

Company Data means all data you own or receive under license which you provide or make available to us in connection with the provision of our Services including any such data that is contained in any data files, tables, objects or other storage medium.

Confidential Information means information that is by its nature confidential and:

- (a) is designated by a party as confidential;
- (b) is described in the Proposal as confidential; or
- (c) a party knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes generally available in the public domain, other than through any breach of confidence;
- (e) is rightfully received from a third person other than as a result of a breach of confidence; or
- (f) has been independently developed by a party without using any Confidential Information of the other.

Claim includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Deliverable means any Project Materials to be created or provided by us in the course of, or as a consequence of, providing the Services and includes each item that is identified as a deliverable in the Proposal.

Delivery Plan means the timetable for the delivery of the Services outlined in the Proposal.

Duration has the meaning set out in clause 17.1.

IPR's means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets together with any documentation relating to those rights but does not include moral rights.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Objective has the meaning set out in clause 9.1(c).

Personnel means employees, agents and contractors.

Premises means any office, facility or location where your usual business operations occur.

Project Materials means any methodologies, tools, ideas, processes, documents (including working proofs), diagrams, plans, instructions, drawings, reports, know-how, training materials and instructions created or adapted by us during the course of providing the Services.

Proposal means the document we have provided to you specifying in detail the Services, Deliverables, Delivery Plan and Service Fees.

Services mean all services we are proposing to provide as set out in our Proposal.

Service Fees means our fees for the provision of the Services as described in the Proposal.

Site means any location you intend to include in your energy footprint and be governed by your energy strategy and management activity.

Systems mean all computer firmware, middleware, protocols and other computer programs and all computer hardware, peripheral equipment, networks, communications systems and other equipment of whatever nature, used in your receipt of the Services.