

**New Wilkie Energy (Receivers and Managers Appointed) (Administrators Appointed) purchase order terms and conditions.**

**1 Definitions**

**Accept** means the date the Company accepts the Supplies or services within the meaning of clause 3.2 and "Acceptance" and "Accepted" has a corresponding meaning.

**Company** means New Wilkie Energy Pty Ltd (**Receivers and Managers Appointed**) (**Administrators Appointed**) ACN 007 683 454 or an entity related to the Company, such as Corvus Coal Pty Ltd (**Administrators Appointed**) ACN 621 700 472 and NWE Renewables Pty Ltd (**Administrators Appointed**) ACN 164 937 633, as named in the Purchase Order.

**Complete** means the completed performance of the Services and "Completion" has a corresponding meaning.

**Completion Date** means the date for Completion of the Services specified in the Purchase Order.

**Defective** means any Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

**Deliver** means the physical delivery of the Goods to the Delivery Address and "Deliver" and "Delivered" have corresponding meanings.

**Delivery Address** means Wilkie Creek Mine, Daandine Road, Kogan, Qld, 4406 or otherwise the place for delivery of the Goods specified in the Purchase Order.

**Delivery Date** means the date for delivery of the Goods to the Delivery

**Address** specified in the Purchase Order.

**Force Majeure** means:

- a. lightning strikes, earth quakes, landslides, floods, typhoon, drought, cyclones, storms, bush fires or any other natural disaster or other severe weather event; or
- b. acts of terrorism, riots, civil commotion, hostilities at war (whether declared or not) or explosion, the occurrence of which could not have reasonably be controlled by the party seeking to rely on the occurrence of such an event.

**General Conditions** means these terms and conditions..

**Goods** means the goods, if any, described on the Purchase Order.

**Health and Safety** means health, safety, environment and community.

**Intellectual Property Rights** means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents) trademarks, service marks and designs (whether or not now existing

and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

**Law** means:

- a. Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- b. common law and equity;
- c. authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- d. guidelines of authorities with which the Supplier is legally required to comply.

**Personnel** includes employees, agents, consultants and contractors,

but:

- a. the Company's Personnel do not include the Supplier and the Supplier's Personnel; and
- b. the Supplier's Personnel do not include the Company or the Company's Personnel.

**Modern Slavery Law** means any modern slavery legislative requirements in any jurisdiction that are applicable to the Supplier, the Company or this Purchase Order, including the *Modern Slavery Act 2018 (Cth)*.

**PMSI** means purchase money security interest.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* (as amended) and any other legislation and regulations in respect of it and the following words in clause 17 have the respective meanings given to them in the PPSA: financing change statement, financing statement, PMSI, register, registration and security interest.

**Price** means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs and charges.

**Purchase Order** means:

- a. the purchase order for the Supplies issued by the Company to the Supplier containing, amongst other things, a description of the Goods and/or Services;
- b. these Purchase Order Terms and Conditions and any Special Conditions and Schedules; and
- c. any other documents included in the Purchase Order by express reference.

**Site** means Wilkie Creek Mine, Daandine Road, Kogan, Qld, 4406 or otherwise the site described in the Purchase Order.

**Site Standards and Procedures** means the Company standards, procedures and policies relating to safety, the environment, quality, energy, operations and purchasing and such standards, procedures and policies as notified by

Company, as amended from time to time and any other guidelines, rules, requirements or Site specific conditions which the Company makes available to the Supplier from time to time.

**Schedule** means a schedule attached to this Purchase Order.

**Services** means the services, if any, described on the Purchase Order.

**Special Conditions** means the terms and conditions named as special conditions in the Purchase Order.

**Supplier** means the entity to which the Purchase Order is addressed.

**Supplies** means the Goods and/or Services specified in the Purchase Order.

**Warranty Period** means:

- a. with respect to Goods, the period of 12 months commencing on the date the Goods are Accepted; and
- b. with respect to Services, 12 months from the date on which the Services are Completed.

**Wilful Misconduct** means conduct in connection with the provision of the Supplies which was:

- a. done (or omitted to be done) deliberately or wilfully to cause loss or damage;
- b. done (or omitted to be done) with an intent to cause harm; or
- c. done (or omitted to be done) with reckless disregard of the rights of others and with the knowledge that loss or damage would most likely result.

**2 Supply of goods and/or services**

- 2.1 The Supplier must provide to the Company the Supplies in accordance with the Purchase Order (which includes these Purchase Order Terms and Conditions and the Special Conditions (if any)).
- 2.2 To the extent the Supplier's terms and conditions are provided with the Supplies (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of the Company signs these terms and conditions or annexes the terms and conditions to this Purchase Order).
- 2.3 Subject to clause 2.4, the parties acknowledge and agree that the Supplier shall be taken to have accepted this Purchase Order and be bound to provide to the Company the Supplies in accordance with the Purchase Order from the earlier occurrence of one of the following events:
  - d. the Supplier returning to the Company a signed copy of the Purchase Order; or
  - e. the Supplier commencing work in connection with the provision of the Supplies after receipt of the Purchase Order.

- 2.4 Where this Purchase Order relates to Goods or Services the subject of an existing contract or standing offer between the Supplier and the Company, the terms of that contract or standing offer, as the case may be, shall prevail.
- 2.5 The Supplier must, when providing the Supplies:
- a. not interfere with the Company's activities at the Delivery Address or the Site;
  - b. be aware of and comply with and ensure that the Supplier's employees, agents and suppliers are aware of and comply with:
    - (i) all applicable Laws;
    - (ii) all Site Standards and Procedures, and Site inductions, to the extent that they are applicable to the provision of the Supplies; and
    - (iii) all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions;
  - c. ensure that the Supplier's employees, agents and suppliers entering the Site perform their tasks in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
    - (i) safe working practices;
    - (ii) safety and care of property; or
    - (iii) continuity of work;
  - d. provide all such information and assistance as the Company reasonably requires in connection with any statutory or Health and Safety investigation in connection with the provision of the Supplies;
  - e. on request by the Company, provide to the Company and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
    - (i) producing written reports;
    - (ii) collecting data; or
    - (iii) monitoring or metering;
 in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Purchase Order; and
  - f. leave the Site in a clean and tidy state to the satisfaction of the Company.
- 2.6 The Company may direct the Supplier to remove any of the Supplier's Personnel from the Site if the Company believes the person to be guilty of any misconduct, or any criminal, unlawful, incompetent or negligent behaviour.
- 3 Time for performance**
- 3.1 The Supplier must, in accordance with the terms of this Purchase Order deliver the Goods to the Delivery Address by the Delivery Date and/or Complete the Services at the location(s) specified in the Purchase Order by the Completion Date.
- 3.2 The Company may, unless otherwise agreed in writing with the Supplier, accept or reject any Supplies within 21 days after they have been Delivered or provided to the Company (as the case may be). The Company may reject any Supplies where they are Defective or if they otherwise do not comply with the requirements of clause 9. If the Company does not notify the Supplier of acceptance or rejection of the Supplies within the 21 day period, the Company will be taken to have accepted the Supplies on the expiry of the 21 day period. Acceptance of the Supplies does not in any way adversely affect the Company's rights under this Purchase Order or otherwise. If the Company rejects any Supplies the Company may, without limitation, require the Supplier to promptly provide to the Company at the Supplier's cost, replacement Supplies which comply with the requirements of this Purchase Order.
- 3.3 The Supplier must promptly notify the Company in writing if the Supplier becomes aware that the Supplier will be delayed in providing any items of the Supplies in accordance with the requirements of the Purchase Order.
- 4 Packaging**
- 4.1 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 4.2 Packages must be marked with the Purchase Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.
- 5 Title and risk**
- 5.1 Title in the Goods passes to the Company upon the earlier of payment of the Price or Delivery of the Goods to the Delivery Address.
- 5.2 Unless stated otherwise, risk for loss of or damage to the Goods passes to the Company when the Supplier has safely removed the Goods off its transporters and deposited the Goods at the Delivery Address.
- 6 Price**
- 6.1 Subject to the terms of this Purchase Order, the Company must pay the Supplier the Price for the Supplies which comply with the provisions of the Purchase Order.
- 6.2 The Price is inclusive of all costs incurred by the Supplier in the provision of the Supplies.
- 6.3 Payment does not constitute the Company's Acceptance of the Supplies.
- 6.4 The Supplier will at all times remain responsible for making, and hereby indemnifies the Company against, all necessary deductions in respect of personnel who will be performing any Services including any legislation concerning income, payroll or fringe benefits tax, superannuation, workers' compensation or leave entitlements. The Supplier acknowledges that the Company may deduct from the Price any amounts for which the Company has been indemnified under this clause.
- 7 Goods and service tax (GST)**
- 7.1 For the purposes of this clause 7, "Supplier" has the meaning given in this clause and the terms, "GST", "GST law", "Supply" and other capitalised terms used but not otherwise defined in this clause 7 have the meanings given to them by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) or any replacement or other relevant legislation and regulations, except that "GST law" also includes any other legislation enacted to validate, recapture or recoup tax collected as GST.
- 7.2 Unless otherwise stated, all amounts payable (including non-monetary consideration) by the recipient of a Supply (Recipient) to the party making the Supply (Supplier), howsoever described in this Purchase Order do not include GST.
- 7.3 If a Supply under this Purchase Order is subject to GST, the Recipient must pay to the Supplier an additional amount equal to the amount payable in relation to that Supply multiplied by the prevailing GST rate.
- 7.4 The additional amount under clause 7.3 is payable at the same time as the amount payable in relation to the Supply is payable or to be provided.
- 7.5 Any additional amount payable in accordance with clause 7.4 need not be paid until the Supplier provides a Tax Invoice to the Recipient.
- 7.6 If the amount of GST paid is more than is required under the GST law the Supplier shall refund the excess amount to the Recipient. If the amount of GST paid is less than is required under the GST law, the Recipient shall pay the Supplier the difference. For the purposes of calculating further variations under this clause 7, any additional amount referred to in clause 7.3 is taken to be amended by the amount of any earlier variation made under this clause.
- 7.7 If a party to this Purchase Order is entitled to be reimbursed or indemnified for a cost incurred by a party in accordance with this Purchase Order, the amount of the reimbursement or indemnity shall not exceed the GST exclusive cost of the amount. For the avoidance of doubt, the amount of any reimbursement or indemnity does not include any amount attributable to GST for which the party seeking reimbursement is entitled to an Input Tax Credit.
- 7.8 If a party to this Purchase Order is a member of a GST Group, references to GST which the party must pay, and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member is entitled.

- 8 Invoicing**
- 8.1 Unless the Purchase Order specifies otherwise, on Acceptance of the Supplies, the Supplier must email to the Company to the email address listed on the cover sheet of the Purchase Order, a valid tax invoice in the format required by the Company which must include the following details:
- a. a reference to the Purchase Order and the relevant contract (if any) including the line item numbers on the Purchase Order and the Contract number;
  - b. a detailed description of the Supplies which have been provided and the relevant quantity, including the Delivery Date for Goods and/or the period for any Services performed;
  - c. an individual reference number for the Company to quote with remittance of payment;
  - d. the price relating to the Supplies provided, broken down to reflect the same price components on the Purchase Order;
  - e. the amount of any applicable GST;
  - f. Company operation and Site; and
  - g. Company contact name.
- 8.2 At the Company's request, the Supplier must provide the Company with all relevant records to calculate and verify the amount set out in its invoice.
- 8.3 The Company is not obliged to approve an invoice submitted in accordance with clause 8.1 and may withhold money due to the Supplier under this Purchase Order if the Supplies (or any part of them) are Defective.
- 8.4 Subject to clause 8.3 and 8.5, the Company will, unless stated otherwise, pay all invoices that comply with clause 8.1 within 30 days of receipt of a valid invoice. Where the Company disputes the invoice:
- a. the Company may withhold payment pending resolution of the dispute; and
  - b. if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount within 14 days of resolution of that dispute.
- 8.5 The Company may reduce any payment due to the Supplier under this Purchase Order by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover amounts due to it in other ways.
- 9 Quality**
- 9.1 All Goods and Services included in the Supplies must match the description (if any) referred to in the Purchase Order.
- 9.2 Where Goods are to be provided as part of the Supplies, the Goods must:
- a. be fit for the purpose for which goods of the same kind are commonly supplied or bought and for any other purpose the Company specifies in writing prior to the date of this Purchase Order;
  - b. be new and of merchantable quality, unless otherwise specified in the Purchase Order;
  - c. comply with the standards specified in the Purchase Order; and
  - d. be free from defects and deficiencies in design, materials and workmanship.
- 9.3 Where Services are to be provided as part of the Supplies, the Services must:
- a. be fit for the purpose for which services of the same kind are commonly supplied or bought and for any other purpose the Company specifies in writing prior to the date of this Purchase Order;
  - b. comply with all applicable standards;
  - c. be provided with the professional skill, care and diligence of a competent supplier; and
  - d. be provided using Personnel who are appropriately qualified, skilled and experienced.
- 9.4 The Company must receive the benefit of any warranties provided by manufacturers of the Goods or materials or other components which are used in the performance of the Purchase Order where title in the Goods or materials ultimately passes to the Company.
- 10 Defective supplies**
- 10.1 If, between the date of the Purchase Order and the expiration of the Warranty Period, any of the Supplies are found to be Defective, the Company may at the Company's option:
- a. with respect to Defective Goods:
    - (i) return the Defective Goods to the Supplier at the Supplier's cost and the Supplier must replace those Goods at the Supplier's cost;
    - (ii) reject the Defective Goods and the Supplier agrees to refund to the Company any payments made to the Supplier in respect of those Goods; or
    - (iii) repair or make good the Defective Goods at the Supplier's cost; and
  - b. with respect to Defective Services:
    - (i) reject the Defective Services and the Supplier agrees to refund to the Company any payments made to the Supplier in respect of those Services; or
    - (ii) direct the Supplier to re-perform the Services at the Supplier's cost and the Supplier shall promptly comply with any direction made pursuant to this clause.
- 10.2 The Supplier must promptly reimburse the Company for any expenses incurred by the Company in repairing, re-performing or making good (as the case may be) any Defective Supplies.
- 10.3 Without limiting clause 12, the Supplier must pay for any damage to property on or near the Site caused by Defective Supplies.
- 11 Confidential information and intellectual property**
- 11.1 Where the Supplier has access to any of the Company's confidential information, the Supplier must:
- a. keep the confidential information confidential; and
  - b. not (except to the extent required by Law) disclose it to any person without the prior written consent of the Company.
- 11.2 Intellectual Property Rights created by the Supplier in supplying the Goods or performing the Services to the Company upon creation vest in the Company. To the extent found otherwise, the Supplier assigns and transfers all such Intellectual Property Rights as created. The Supplier warrants that it will not infringe any third party Intellectual Property Rights in providing the Supplies.
- 12 Indemnities and insurance**
- 12.1 The Supplier shall indemnify and keep indemnified the Company and its employees, agents, consultants and contractors (Indemnified Parties) for liability, loss, damage, cost, charge or expense suffered or incurred by any of them arising from:
- a. any personal injury, disease or illness suffered by, or the death of, any person engaged by the Supplier to provide the Supplies under the Purchase Order;
  - b. personal injury, disease, illness suffered by or death of any person to the extent caused, or contributed to, by any unlawful or negligent act or omission of the Supplier or the Supplier's Personnel, except to the extent that the indemnity under clause 12.1(a) applies;
  - c. physical loss of or damage to property of the Company or any third party to the extent caused, or contributed to, by any unlawful or negligent act or omission of the Supplier or the Supplier's Personnel;
  - d. any interest in or right over, or any alleged interest in or right over, (whether by encumbrance, lien, charge, mortgage or any other interest or right recognised by the law of any relevant jurisdiction)

- any goods that the Supplier does or seeks to sell, transfer, lease, licence or otherwise dispose of to the Company;
- e. any infringement, or alleged infringement, of any third party's Intellectual Property Rights; and
  - f. any criminal or fraudulent act or omission, or Wilful Misconduct of the Supplier or the Supplier's Personnel; provided that the Supplier's liability to indemnify the Company will be reduced proportionally to the extent the liability, loss, damage, cost, charge or expense is caused, or contributed to by, any unlawful or negligent act or omission of the Indemnified Parties.
- 12.2 The Supplier must maintain:
- a. workers' compensation insurance as required by applicable Laws;
  - b. product and public liability insurance for an amount, unless otherwise stated in the Purchase Order, of \$10,000,000.00 for any one occurrence; and
  - c. any other insurance specified on the Purchase Order.
- 13 Termination**
- 13.1 In addition to any other rights it may have under the Purchase Order or otherwise, the Company may immediately terminate this Purchase Order by notice in writing to the Supplier:
- a. if the Supplier fails to provide the Supplies by any of the dates set out in the Purchase Order;
  - b. if the Supplies provided are Defective and the Supplier fails to promptly comply with any of its obligations under clause 10;
  - c. if the Supplier breaches any of its obligations under clause 2.5;
  - d. if the Supplier fails to remedy a breach of any other term or condition of this Purchase Order within 5 Business Days of being directed in writing to do so by the Company; or
  - e. in its absolute discretion at any time and for any reason by giving the Supplier 14 days written notice. If the Company issues a notice under this clause 13.1(f), the Company will, subject to clause 8.5, only be liable for payments to the Supplier for the Supplies provided in accordance with the Purchase Order up until the date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Company. The Supplier must promptly deliver to the Company any Goods and materials that the Company has paid for under this clause. The Supplier will not be entitled to any profit anticipated on any part of the Purchase Order terminated.
- 13.2 Immediately upon the termination of this Purchase Order, the Supplier will:
- a. cease the provision of the Supplies and, unless otherwise directed by the Company, remove all of its plant, equipment and materials from Site, minimising disruption and remediating any damage caused by removal;
  - b. if directed by the Company, remove the Goods from Site;
  - c. clean the Site at which the Supplies were provided to the extent the uncleanness is caused by the Supplier; and
  - d. provide to the Company all confidential information, any items in respect of which intellectual property rights are held by the Company, and any property, including records or information, belonging to the Company or relating to the Supplies.
- 14 Force majeure**
- 14.1 If a party becomes unable by reason of a Force Majeure event to carry out an obligation under this Purchase Order, that party must give written notice specifying the details of the Force Majeure event and its effect on that party's operations and performance of its obligations.
- 14.2 Upon service of notice pursuant to clause 14.1, the obligations of the affected party will be suspended, but only to the extent that, and for as long as, the affected party is unable by reason of the Force Majeure event to carry out those obligations in accordance with this Purchase Order.
- 15 Agency and authority**
- If the Company consists of more than one person or enters into this Purchase Order as agent of persons in a joint venture:
- a. an obligation of those persons is several and those persons' liability is several in proportion to the respective interests that are disclosed from time to time by the Company (including on the Company's website); and
  - b. a right of those persons is held severally.
- 16 Modern slavery**
- Without limiting the Supplier's obligations elsewhere in these Terms or otherwise, the Supplier must:
- a. comply with all obligations under the Modern Slavery Laws;
  - b. have and maintain adequate and reasonable policies and procedures to prevent, detect, assess, manage and remedy modern slavery risks in the Supplier's operations and supply chain;
  - c. provide any information the Company requires and comply with the Company's directions to enable the Company to comply with the Company's obligations under the Modern Slavery Laws; and
  - d. keep records adequate to demonstrate compliance with this clause.
- 17 PPSA**
- 17.1 The Supplier acknowledges and agrees that it will not register any PMSI under the PPSA in respect of the Goods and/or Services without the prior written consent of the Company.
- 17.2 In the event the Company provides its consent pursuant to clause 17.1, the Supplier acknowledges and agrees that the Company will not be responsible for:
- a. the preparation and registration of the financing statement or financing change statement; and
  - b. payment of any fees associated with the registration.
- 17.3 The Supplier is obliged, at all times, to give the Company notice if the Supplier's security interest is assigned to another party.
- 18 General**
- 18.1 The Law applicable to this Purchase Order is the Law applicable in Queensland.
- 18.2 Any part of this Purchase Order that is held to be unlawful or unenforceable by a court of competent jurisdiction is severed and the remaining provisions will continue to operate.
- 18.3 If a dispute arises between the parties in relation to any aspect of the Supplies (or any part of them), neither party can commence litigation (other than urgent injunctive proceedings) until a representative from each party meets to attempt to resolve the dispute, and the dispute cannot be resolved within 14 days of that meeting.
- 18.4 A notice given under this Purchase Order must be in writing addressed to the recipient at the address on the Purchase Order cover page.
- 18.5 It is the intention of the Company and the Supplier that their relationship is one of principal and independent contractor.
- 18.6 Subject to clause 2.4, the Purchase Order represents the parties entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 18.7 The Supplier must not assign any of its rights, interests or obligations under this Purchase Order without the prior written consent of the Company.
- 18.8 The supplier must not subcontract the Supplies without the prior written consent of the Company.
- 18.9 The Supplier must comply with all relevant Laws when providing the Supplies.
- 18.10 Either party may propose a change to the Purchase Order (Change). Changes to the Purchase Order terms will only take effect if the Company issues a new purchase order reflecting the Change. The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the change is in accordance with this clause 18.10.