

CONDITIONS OF PURCHASE (GOODS AND SERVICES) DOMESTIC AND INTERNATIONAL

1. DEFINITIONS

For the purposes of these Conditions of Purchase:

Agreement means the Order together with these Conditions of Purchase;

Delivery Point means the place specified as the delivery point in an Order;

Domestic means that the Seller is located within New Zealand;

Goods means the goods specified in an Order that are to be supplied by the Seller to PowerSmart on the terms set out in this Agreement;

GST means goods and services tax payable under the GST Act or any similar tax under any replacement legislation;

GST Act means the Goods and Services Tax Act 1985 (as amended);

Inland Revenue means the New Zealand Inland Revenue Department;

ITA means the New Zealand Income Tax Act 2007;

NRCT means Non-Resident Contractors' Tax levied under the ITA;

International means that the Seller is located outside New Zealand;

PowerSmart means PowerSmart NZ Limited or any of its wholly-owned subsidiaries;

Order means a purchase order issued by PowerSmart to the Seller;

Personal Property Securities Register means the electronic register maintained by the New Zealand Companies Offices (on behalf of the New Zealand Ministry of Economic Development) and which allows security interests in personal property to be registered and searched in accordance with the New Zealand Personal Property Securities Act 1999;

Seller means the person to whom the Order is addressed or any subcontractor, independent contractor or other class of person appointed by that person;

Services means the services referred to in an Order that are to be supplied by the Seller to PowerSmart on the terms set out in this Agreement;

Tax Invoice means an invoice that complies with section 24 of the GST Act.

2. GENERAL

Any Goods and/or Services purchased by PowerSmart from the Seller will be purchased on the terms set out in this Agreement only. This Agreement constitutes the entire agreement of the parties in respect of the matters covered by it and supersedes all previous agreements in respect of those matters, including the Seller's terms (if any).

3. PRICE AND TAX

- (a) The purchase price of the Goods and/or Services will be the price specified in the Order or, where no price is specified, the price current when the Goods and/or Services are ordered.
- (b) The purchase price of the Goods and/or Services will be:
 - (i) for Domestic Sellers, inclusive of all taxes and duties of any kind that either

party is required to pay in respect of the sale of the Goods or the provision of the Services other than GST;

- (ii) for International Sellers, in New Zealand dollars, unless specified otherwise in the Order and inclusive of all taxes and duties of any kind other than those PowerSmart is responsible for paying under clause 3(c).
- (c) Liability for freight and insurance as between the Seller and PowerSmart;
 - (i) for Domestic sellers, will be as specified in the Order or, where liability is not specified, the Seller will pay for freight and insurance.
 - (ii) for International sellers, all trade shall be governed by INCOTERMS® 2010. Where no Incoterm rule is specified on the order, the DDP (Delivered Duty Paid) rule shall apply.
- (d) Following acceptance of an Order, the Seller must send PowerSmart a valid invoice that records the price of the Goods and/or Services separately from the value of any GST payable on those Goods and/or Services. Where any amendment is made to the amount payable for the Goods and/or Services after the invoice has been issued, the Seller must issue a credit or debit note (as the case may be) to PowerSmart. If required by PowerSmart, the Seller will issue a Tax Invoice and any credit note or debit note issued by the Seller must comply with the GST Act.
- (e) The Seller alone shall be responsible for paying all income tax and other taxes and levies of any nature imposed upon the Seller in respect of the supply of the Goods and/or Services to PowerSmart, whether in New Zealand or elsewhere, and for making arrangements with Inland Revenue or the equivalent taxation authorities elsewhere in respect of such payments. PowerSmart will not make any adjustment or reimbursement in respect of any additional amounts which the Seller may pay to or on behalf of its personnel to compensate for any increases in income tax or other taxes and levies of whatsoever nature which they may incur or suffer by reason of either operating, or supplying the Goods and/or Services to PowerSmart in New Zealand.
- (f) Where the Seller is a non-resident contractor for the purposes of the ITA, the Seller acknowledges that payments made by PowerSmart in respect of any Service provided by that Seller (and/or its employees who are in New Zealand at the time the Service is performed) to PowerSmart are subject to NRCT and PowerSmart is required to deduct the total amount of NRCT from payments to the Seller unless:

- (i) the Seller provides PowerSmart with a Certificate of Exemption issued by Inland Revenue specifying that NRCT is not to be deducted from payments to the Seller in respect of their contract activity in New Zealand; or

- (ii) The Seller provides PowerSmart with the following declaration:

"The Seller and/or its employees will not be present in New Zealand for more than 92 days in any 12 month period in which the Seller performs work for PowerSmart. For the avoidance of doubt such presence in New Zealand includes any work performed for entities other than PowerSmart."

If the Seller does not meet the requirements of either (i) or (ii), PowerSmart will deduct any NRCT that PowerSmart is required to deduct from the purchase price paid to the Seller and PowerSmart will not be required to increase the purchase price payable to the Seller by the amount of any such deduction of NRCT.

If the Seller provides a statement as specified at (b)(ii), and the statement becomes invalid, the Seller will immediately advise PowerSmart and remit to PowerSmart the total amount of any NRCT paid by PowerSmart.

- (g) Any amount withheld or deducted by PowerSmart from any payment due to the Seller and paid to the Inland Revenue pursuant to PowerSmart's reasonable understanding of its duty under the ITA, or the Tax Administration Act 1994 (or related statutes or replacements) or regulations made thereunder shall for the purposes of this Agreement be deemed to have been paid by PowerSmart to the Seller and the payment thereof to the Commissioner of Inland Revenue shall be treated as a complete discharge of PowerSmart's liability to the Seller in respect of the amount so paid.
- (h) The parties agree that the purchase price of any Goods purchased by PowerSmart from the Seller pursuant to this Agreement is the lowest price that the parties would have agreed upon on the basis of payment in full on the date of this Agreement and on that basis no income or expenditure arises in respect of the sale and purchase of the Goods under the rules relating to financial arrangements in the ITA.

4. DELIVERY OF GOODS

- (a) The Goods are to be delivered by the Seller to the Delivery Point.
- (b) Where a delivery date is specified in the Order, time is of the essence. The Seller indemnifies PowerSmart against any loss or damage suffered if the Seller does not deliver the Goods to the Delivery Point by the specified delivery date and, without prejudice to PowerSmart's other rights, PowerSmart may cancel the Order and/or all further deliveries of Goods.
- (c) Delivery of the Goods will be deemed to have

occurred when:

- (i) the Goods have been unloaded at the Delivery Point; and
 - (ii) PowerSmart has inspected the Goods; and
 - (iii) PowerSmart or its agent has acknowledged receipt of the Goods.
- (d) Without prejudice to PowerSmart's other rights, if the Seller delivers a different quantity of Goods to that specified in the Order, PowerSmart may accept all of the Goods or accept any lesser quantity and reject the rest of the Goods.
 - (e) The Seller will be liable for all costs and losses that PowerSmart incurs as a result of the delivery of the wrong quantity of the Goods or the wrong goods.
 - (f) The Seller must provide detailed delivery documents with every delivery of Goods, which must contain, as a minimum, PowerSmart's order number and order item number, the date, the Seller's details, the quantity of Goods dispatched and an item description.

5. PROVISIONS OF SERVICES

Where the Order specifies a date by which the Services must be provided, time is of the essence. The Seller indemnifies PowerSmart against any loss or damage suffered if the Seller does not provide the Services by the specified date and, without prejudice to PowerSmart's other rights, PowerSmart may cancel the Order and/or all further provision of Services.

6. OWNERSHIP AND RISK

- (a) Except as otherwise provided in this Agreement, ownership of and risk in the Goods will pass to PowerSmart once the Goods are delivered to, inspected by, and accepted by PowerSmart. Acceptance as to ownership of the Goods does not defeat the Seller's warranties contained in clause 11, or PowerSmart's rights of return under clause 8, or act as a waiver of any of PowerSmart's other rights.
- (b) Notwithstanding clause 6(a), the Seller bears the risk of loss or damage to Goods until ownership of those Goods passes to PowerSmart in accordance with clause 6(a) or the terms of the Order.

7. INSPECTION

PowerSmart or its representative has the right at all reasonable times to inspect the Goods (whether in the course of manufacture or not) and/or Services, whether at the Seller's place of business or otherwise. Notwithstanding such inspection or PowerSmart's acceptance of delivery, all Goods and, where applicable, Services are subject to PowerSmart's inspection and acceptance at its own premises following delivery or completion. If the Goods are to be installed or incorporated into any plant, machinery or any other part of PowerSmart's premises, such inspection and acceptance may be carried out after installation or

incorporation under operating conditions.

8. RETURN OF GOODS

If PowerSmart cancels the Order or rejects any Goods in accordance with this Agreement, PowerSmart may, at the risk and expense of the Seller, return the whole or any part of the Goods to the Seller and, at PowerSmart's discretion, require the Seller:

- (a) to replace or repair the defective Goods at no additional cost; or
- (b) refund in full any money paid to the Seller for Goods that have been returned.

9. FAILURE TO PROVIDE SERVICES

If the Seller fails to provide all or part of the Services in accordance with this Agreement, PowerSmart may obtain replacement services from a third party at the Seller's cost.

10. PACKING

All Goods must be marked, packed and otherwise protected, at the Seller's expense, for transit to the Delivery Point, in such manner as will prevent any damage to or deterioration of the Goods under normal transport and storage conditions having regard to the nature of the Goods.

11. WARRANTIES

(a) The Seller warrants that the Goods:

- (i) are free from any charges, encumbrances or other security interests;
- (ii) will, on delivery to PowerSmart, be free from any liens, charges, encumbrances and security interests and no financing statement is or will be registered or maintained in respect of the Goods in the Personal Property Securities Register;
- (iii) will, for a period of 12 months after the supply of such Goods, remain fit for the purposes made known by PowerSmart (expressly or by implication) or, if purposes are not made known, will be fit for all the purposes for which goods of the type in question are commonly supplied or for which the Seller represents that they are or will be fit;
- (iv) are of merchantable quality and are free from defects in design, material and workmanship **provided that** where the Goods have been manufactured in accordance with any drawings, specifications or instructions provided by PowerSmart, the Seller warrants only that the Goods conform to such drawings, specifications or instructions, are of sound material and workmanship, and are free from any defects;
- (v) where the Goods have been manufactured by a third party, PowerSmart will receive the full benefit of all warranties given by that third party manufacturer in respect of those Goods;
- (vi) correspond with the sample, demonstration model or description

where the sale is by sample, demonstration model or description, as the case may be; and

- (vii) will not be supplied to PowerSmart on terms that would allow the Seller or any third party to have access to any of PowerSmart's premises to recover the possession of the Goods.

To the extent permitted by law, the above warranties are in lieu of and to the exclusion of any express or implied conditions or warranties, statutory or otherwise, relating to the quality and description of the Goods.

(b) The Seller warrants that the Services:

- (i) will be provided in a timely manner in compliance with this Agreement;
- (ii) will be performed with due care, skill and diligence by competent and qualified persons; and
- (iii) will be fit for the purposes made known by PowerSmart to the Seller (expressly or by implication) or, if no purposes are made known, for all the purposes for which Services of the type in question are commonly acquired or for which the Seller represents they are or will be fit.

(c) The Seller warrants that it has obtained all licences, authorisations and other formalities necessary for the manufacture (and for International Sellers the export) of the Goods and/or the provision of the Services.

(d) Without limiting PowerSmart's rights under this Agreement or otherwise, if the Seller breaches any of the warranties in this clause 11 and/or the warranty in clause 14, PowerSmart may:

- (i) in the case of Goods, reject all of the Goods or any of them and obtain from the Seller, at PowerSmart's option, a refund of the purchase price paid in respect of the rejected Goods or replacement Goods; or
- (ii) in the case of Goods, accept the Goods or any of them and obtain from the Seller damages in compensation for any reduction in value of the Goods below the purchase price paid or payable for the Goods; or
- (iii) in the case of Services, require the Seller to stop providing the Services and obtain replacement services from a third party at the Seller's cost.

(e) Ownership of any Goods rejected under clause 11(d)(i) shall remain with the Seller and those Goods will continue to be at the Seller's sole risk.

12. INDEMNITY AND INSURANCE

(a) The Seller indemnifies PowerSmart for all claims, costs, demands, expenses, liabilities, damages or losses of any nature, arising out of or in connection with the Seller's failure to comply with this Agreement, provided

that the Seller's liability under this clause 12(a) shall be limited to \$NZ1 million (plus GST, if any) for any one event or for any series of related events.

- (b) The Seller shall hold, and keep current until such time as PowerSmart has accepted the Goods or the Seller has provided the Services to the satisfaction of PowerSmart (as the case may be), \$NZ1 million public liability insurance and, if PowerSmart requires, \$NZ1 million professional indemnity insurance in relation to the Goods and/or Services. At PowerSmart's request, the Seller must provide PowerSmart with copies of certificates containing details of the required policies.
- (c) Without prejudice to any other remedies available to PowerSmart, if the Seller provides any Services or constructs, inspects or delivers any Goods to PowerSmart at the Delivery Point or one of PowerSmart's other premises, the Seller will, at its own expense, indemnify, hold harmless and defend PowerSmart and its officers, agents, contractors and employees for any loss, liability or demand, or the payment of any sum of money by reason of any damage to any property, that may occur in connection with the construction, inspection or delivery of the Goods and/or the provision of the Services.

13. HEALTH, SAFETY AND ENVIRONMENT

If it provides Goods and/or Services at PowerSmart's premises, the Seller must ensure that:

- (a) its employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment;
- (b) it complies with all applicable New Zealand legislation including (without limitation) the Resource Management Act 1991 and the Health and Safety at Work Act 2015;
- (c) it complies with all of PowerSmart's safety requirements and procedures;
- (d) it performs appropriate health, safety and environment risk assessments and implements any necessary preventative controls prior to providing the Goods and/or Services;
- (e) it immediately reports to PowerSmart all incidents involving injury or potential injury to any person or the environment or damage to property;
- (f) PowerSmart's premises are left secure, clean, orderly and fit for use; and
- (g) all PowerSmart's property, including (without limitation) all security swipe cards, keys, books, records and papers, is returned to PowerSmart once the Seller has provided those Goods and/or Services.

14. INTELLECTUAL PROPERTY RIGHTS

- (a) The Seller warrants that the sale or use of the Goods and/or the supply of the Services will not infringe any patent, design, trade mark, copyright or other intellectual property right of a third party or result in PowerSmart becoming

liable for the payment of any royalties or other fees.

- (b) Any intellectual property created by the Seller in the course of providing the Goods or the Services will be owned by PowerSmart.
- (c) The Seller will, at its own expense, indemnify, hold harmless and defend PowerSmart and its officers, agents, contractors and employees for any loss, damage, expense, liability, claim or demand for actual or alleged infringement of any patent, design, trade mark, copyright or other intellectual property right of a third party, arising from the purchase, use or sale of the Goods, supply of the Services, or any other dealings arising under this Agreement.
- (d) All plans, drawings, specifications and other technical or engineering data relating to the Goods and/or Services supplied by or on behalf of PowerSmart to the Seller, and any copies or patterns made from those documents, remain PowerSmart's exclusive property and the Seller will only use them for the purposes of the Order and will return them to PowerSmart on demand.
- (e) Clauses 14(a) and (b) do not apply where the Goods are manufactured to PowerSmart's detailed design.

15. AMENDMENTS TO DRAWINGS, SPECIFICATIONS OR INSTRUCTIONS

PowerSmart may amend any of the drawings, specifications or instructions for Goods and/or Services (**Amendment**) and the Seller must comply with any notification of an Amendment. If an Amendment results in a decrease or increase in the Seller's costs, or in the time for providing the Goods and/or Services, the parties may agree, in writing, to adjust the price and/or the time for providing the Goods and/or Services, provided that the Seller notifies PowerSmart of the request for such an adjustment within seven days after receipt of the Amendment notification.

16. PAYMENTS

- (a) Unless otherwise agreed in writing between the parties, PowerSmart is to pay for the Goods and/or Services in accordance with any terms set out in the relevant Order, or, if no such terms are set out, on the 20th day of the month following the date of the invoice or Tax Invoice for the Goods and/or Services submitted by the Seller, unless there is a dispute regarding the invoice or Tax Invoice.
- (b) Unless otherwise agreed in writing between the parties, PowerSmart will direct credit the payment for the Goods and Services into the Seller's bank account. PowerSmart will notify the Seller of that payment by remittance advice to the Seller on or before the day of the payment.
- (c) Payment shall not prejudice PowerSmart's right to reject any Goods and/or Services

for breach of warranty or to obtain a refund for such Goods and/or Services.

- (d) PowerSmart will not be liable to pay for any goods delivered in excess of the amounts specified in any Order.

17. CANCELLATION

- (a) Unless previously withdrawn by PowerSmart, an Order is open for acceptance by the Seller for the period stated in the Order or, when no such period is stated, for a period of three business days from the date of the Order.
- (b) PowerSmart may cancel an Order, with immediate effect, by notice to the Seller, if the Seller:
- (i) fails to perform any of its obligations under this Agreement and the failure has not been remedied within three business days of receipt of a notice by the Seller requiring the failure to be remedied;
 - (ii) has appointed a receiver, receiver and manager, liquidator, statutory manager, passes a resolution for winding up, or assigns its estate or any substantial part of it for the benefit of its creditors; or
 - (iii) is unable to pay its debts in the ordinary course of business or is insolvent.
- (c) PowerSmart may at any time, by notice in writing to the Seller, cancel the Order in respect of any undelivered Goods or uncompleted Services. If the Order covers:
- (i) standard stock goods or standard services, PowerSmart's only obligation to the Seller is to pay for Goods delivered, or Services provided, prior to the date of cancellation; and
 - (ii) Goods or Services manufactured or provided, or to be manufactured or provided, to PowerSmart's specifications or specifications prepared by the Seller for PowerSmart, then, on receipt of the cancellation notice, the Seller must immediately stop all performance under the Order except as PowerSmart otherwise directs.
- (d) Notwithstanding clause 17(c)(ii), where the Seller is not in default of its obligations under this Agreement, PowerSmart must, on cancellation under clause 17(c)(ii), pay to the Seller:
- (i) all reasonable costs directly incurred by the Seller in connection with the Order up to and including the date of cancellation; and
 - (ii) such other reasonable costs, including cancellation charges under any subcontract, as the Seller may establish to the satisfaction of PowerSmart, provided however that the total cancellation payment plus any previous payment made by PowerSmart to the Seller for the Goods and/or the Services, as the case may be, must not exceed the total price stipulated in the Order. On such payment, the ownership of all Goods and uncompleted work shall pass to

PowerSmart.

- (e) The expiry or termination of this Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of expiry or termination.

18. LEGAL COMPLIANCE

The Seller must comply with all applicable laws, rules, regulations, bylaws, standards, codes of practice, and PowerSmart's current policies and procedures in providing the Goods and Services.

19. WAIVER

- (a) No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.
- (b) A waiver by PowerSmart pursuant to this clause 19 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Seller.
- (c) No failure by PowerSmart to exercise, and no delay in exercising, a right under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

20. SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement remains otherwise in full force apart from such provision that will be deemed deleted.

21. AMENDMENT

No amendment to this Agreement is effective unless it is in writing signed by both parties.

22. ASSIGNMENT AND SUBCONTRACTING

The Seller must not assign this Agreement or subcontract any of its obligations under this Agreement without PowerSmart's prior written consent.

23. RELATIONSHIP OF THE PARTIES

The relationship of the parties is one of independent contractors. Nothing in this Agreement is or will be taken as constituting the relationship of employer/employee, partners or joint-venturers between the parties.

24. INCONSISTENCY

To the extent of any inconsistency between these Conditions of Purchase and the Order, the terms of the Order will prevail.

25. DISPUTES

- (a) The parties agree that any dispute of whatever nature arising between PowerSmart and the Seller is to be notified in writing by the disputing party to the other (**Dispute Notice**). On receipt of a Dispute Notice, each party is to use its best endeavours to resolve the dispute by discussion, meeting and/or other informal means.
- (b) If the dispute is not resolved by discussion, meeting and/or other informal means within 10 business days of the date of the Dispute

Notice, then the parties may agree to submit the dispute to arbitration pursuant to the Arbitration Act 1996 (excluding Clauses 4 and 5 of the Second Schedule), or, failing agreement, either party may pursue resolution of the dispute through legal proceedings before the New Zealand courts.

- (c) This clause 25 does not affect either party's right to seek urgent interlocutory relief.

26. RIGHTS AND RESPONSIBILITIES THAT CONTINUE

The provisions of clause 11 will continue to bind the parties notwithstanding the expiry or termination of this Agreement or that either party may have ceased to be a party to this Agreement.

27. APPLICABLE LAW

This Agreement is governed by, and is to be construed in accordance with, New Zealand law.

28. REFERENCES

In this Agreement, a reference to any legislation or to any statutory provision includes: (i) any statutory amendment, modification or re-enactment of; (ii) any statutory provision substituted for; and (iii) all ordinances, by-laws, regulations, rules, by-laws, codes and statutory instruments (however described) issued under, that legislation or statutory provision (as the case may be).

29. EXCLUSION OF UNITED NATIONS CONVENTION

The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or to the supply of Goods under this Agreement.