

**GLOBAL SUSTAINABLE ENERGY SOLUTIONS PTY LIMITED**  
**TERMS AND CONDITIONS**

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## **1 DEFINITIONS**

In this document:

- 1.1 **"Agreement"** means any contract or agreement, whether formal or informal, written, oral or partly written and partly oral, formed between the Client and GSES, including but not limited to by way of the Client's acceptance of a Quote issued by GSES.
- 1.2 **"Client"** means the individual, business, partnership or company entering into an Agreement with GSES and includes the Client's successors and assigns.
- 1.3 **"Deposit"** means the percentage of the Price payable by the Client prior to GSES commencing the Works as specified on the Quote.
- 1.4 **"GSES"** means Global Sustainable Energy Solutions Pty Limited (ACN 084 230 955) and each related entity as defined in the *Corporations Act 2001* (Cth) of Global Sustainable Energy Solutions Pty Limited (ACN 084 230 955) now or at any time Services are supplied to the Client in the future.
- 1.5 **"Notice"** means a notice in accordance with clause 18.
- 1.6 **"Party"** means each party to an Agreement, including GSES and the Client, and **"Parties"** has a corresponding meaning.
- 1.7 **"Price"** has the meaning stated in clause 5 and is subject to clause 15.
- 1.8 **"Quote"** means a quote issued to the Client by GSES.
- 1.9 **"Service"** means the provision of services by GSES to the Client pursuant to an Agreement including but not limited to:
  - 1.9.1 Engineering design consultancy services, including technical design services and data analysis of energy consumption;
  - 1.9.2 Photovoltaic System and associated electrical system design;
  - 1.9.3 Parts selection and optimisation;
  - 1.9.4 Energy assessment;
  - 1.9.5 System modelling;
  - 1.9.6 Network connection applications;
  - 1.9.7 System proposals for Photovoltaic installers/retailers;
  - 1.9.8 Bill of materials selection;
  - 1.9.9 Dimensions and parameters of civil aspects where guidance is not provided;
  - 1.9.10 Photovoltaic system sales proposals;
  - 1.9.11 Photovoltaic system calculation analysis and design;
  - 1.9.12 Electrical engineering services including network technical studies, fault, protection coordination and arc flash studies;
  - 1.9.13 Photovoltaic system performance estimates and energy analysis; and
  - 1.9.14 Photovoltaic system concept design, detailed design and 'Issued For Construction' design engineering and documentation.
- 1.10 **"Terms and Conditions"** means the terms and conditions set out herein subject to any amendments expressly made by GSES pursuant to clause 3.3.
- 1.11 **"Works"** means GSES's provision of Services pursuant to the Agreement.
- 1.12 Unless context requires otherwise:
  - 1.12.1 the singular includes the plural and vice versa;
  - 1.12.2 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
  - 1.12.3 a reference to any gender includes all genders;
  - 1.12.4 a reference to a recital, clause or schedule is to a recital, clause or schedule of or to these Terms and Conditions;
  - 1.12.5 a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
  - 1.12.6 a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations,

proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- 1.12.7 a reference to a body, other than a Party to the Contract (including, without limitation, an institute, association or authority), whether statutory or not:
  - (a) which ceases to exist; or
  - (b) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- 1.12.8 If a party comprises two or more persons, the covenants and Contracts on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- 1.12.9 A reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.12.10 No provision of these Terms and Conditions will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms and Conditions or that provision;
- 1.12.11 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 1.12.12 All references to A\$, \$, dollar, \$, or to currency are references to Australian dollars;
- 1.12.13 "Including" and similar expressions are not and must not be treated as words of limitation; and
- 1.12.14 Headings are for ease of reference only and do not affect the meaning of these Terms and Conditions.

## **2 SERVICES**

- 2.1 GSES agrees to provide the Client with the Services subject to these Terms and Conditions. These Terms and Conditions apply in respect of all Agreements, offers to sell, quotations and other commercial transactions for the supply of the Services by GSES to the Client.

## **3 OPERATION AND APPLICATION**

- 3.1 The Agreement between the Client and GSES shall be upon these Terms and Conditions and shall be read in conjunction with these Terms and Conditions.
- 3.2 These Terms and Conditions shall operate to the exclusion of any terms and conditions to the contrary effect expressed in any of GSES's quotations or other communication or documentation and shall supersede all prior Agreements.
- 3.3 From time to time, GSES may review and amend these Terms and Conditions of the Agreement and the Client shall be bound by any variation which shall apply to the supply of any of the Works following the effective date of the variation.

## **4 QUOTATIONS**

- 4.1 Unless stated otherwise on the Quote, GSES's written Quotes are valid for 30 days from the date of issue of the Quote, and thereafter are subject to confirmation in writing by GSES before acceptance.

## **5 PRICE**

- 5.1 The Client shall pay to GSES the Price specified on the Quote or invoice dispatched by GSES plus all taxes, credit card fees, freight, handling, delivery and insurance charges by GSES in respect of the Services (**"the Price"**).
- 5.2 GSES may, at any time before the delivery of the Services, provide written notice to the Client to increase the Price to reflect any increase in the cost to GSES due to a factor beyond the control of GSES including (but without limiting in any way the generality thereof) water, flood, fire, storm tempest, rioting, earthquake, pandemic, civil commotion or industrial action, electrical outages, technical issues, changes to regulations, laws or a relevant authority's processes, any change of delivery dates, quantities or specifications for the Services requested by the Client, any delay caused by the Client, or any variation to the Works or the Agreement pursuant to clause 15.

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**6 PAYMENT**

- 6.1 Unless otherwise agreed in writing by the Parties, the Client must pay the Price in accordance with the payment terms set out in the Quote, including making payment of the Deposit prior to GSES commencing Works and making payment on or before the due date(s) as stated on GSES's Quote or invoice.
- 6.2 Time of payment is of the essence of the Agreement.
- 6.3 The Client acknowledges and agrees that:
- 6.3.1 an amount of the Deposit equal to 5% of the Price, plus the value of all Services provided by GSES, all work done by GSES, and all goods or materials used or procured by GSES and properly chargeable to the date of termination or cancellation of the Agreement, is non-refundable ("**the Non-Refundable Amount**"); and
- 6.3.2 the Non-Refundable Amount represents a reasonable and genuine pre-estimate of the losses to be suffered by GSES in the event that the Client breaches, cancels or terminates the Agreement.
- 6.4 Where the Client has provided details of a debit or credit card for payment to GSES in the Agreement, the Client agrees and authorises GSES to charge or make deductions from the debit or credit card to satisfy the Price or any part of the Price at any time without notice to the Client.
- 6.5 The Client warrants that it shall ensure that its nominated debit or credit card in the Agreement has sufficient clear funds available to pay the Price or any part of the Price when due to GSES under the Agreement.
- 6.6 GSES may charge an additional 1.2% to the Client where the Client has provided details of a debit or credit card for payment to GSES.
- 6.7 GSES shall be entitled to charge the Client interest calculated at 12% per annum, on the balance of all overdue accounts and invoices from the date of due payment until the date of actual payment.
- 6.8 If there is no due date notified by GSES to the Client or stated on GSES's Quote or invoice the Client shall, in any event, pay GSES within 30 days of GSES rendering an invoice to the Client for the Services.

**7 COSTS RECOVERABLE**

- 7.1 Should the Client default in the payment of any monies due under any Agreement, then all monies due to GSES shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand.
- 7.2 The Client shall pay on an indemnity basis all expenses, costs and disbursements, including debt collection agency fees, commission and any fees paid to GSES's solicitors (on an indemnity basis) incurred by GSES or its appointed agents in recovering payment of any outstanding monies, enforcing its rights under the Agreement, or in investigating or defending any action or threatened actions.
- 7.3 Where the Client is a company, the Client's Directors personally guarantee the payment of all costs and expenses owing to GSES by the Client.
- 7.4 The Client hereby charges and mortgages in favour of GSES to secure the repayment of any debt and any monies which may become owed by the Client to GSES hereunder and under any Agreement all of the Client's present and future estate and interest in all real property and personal property.

**8 COMPLETION, DELAYS AND EXTENSIONS OF TIME**

- 8.1 Any time or date named and accepted by GSES, including in the Quote, for completion, delivery, dispatch, or arrival of the Works or Services is an estimate only and does not constitute a condition of the Agreement or part of the description of the Services and is not of the essence of the Agreement.

- 8.2 Should the Works or the progress of the Works be delayed by any of the following causes or conditions resulting therefrom:

- 8.2.1 On account of variations;
- 8.2.2 By inclement weather or conditions resulting from inclement weather;
- 8.2.3 By reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works or affecting the manufacture or supply of materials for the Works;
- 8.2.4 Any act, default or omission on the part of the Client;
- 8.2.5 Delay on the part of any local or other authority in granting or issuing any necessary consent or approval;
- 8.2.6 By any other matter, cause or thing whatsoever beyond the control of GSES including but not limited to unavailability of labour or materials, technical or mechanical issues, electrical outages, technical issues, changes to regulations, laws or a relevant authority's processes, or pandemic;

then in any such case, GSES shall be entitled to a fair and reasonable extension of time in which to complete the Works without notice to the Client.

- 8.3 When the Client becomes aware of any matters that are likely to result in a delay to the Works, the Client is to notify GSES in writing of the nature and estimated extent of the delay.

- 8.4 Upon receipt of the Client's notice in clause 8.3 above, GSES will notify the Client of the estimated impact of the delay on:

- 8.4.1 The time for completion of the Works; and
- 8.4.2 The estimated extra costs associated with the delay.

- 8.5 The Client shall pay for GSES's extra costs and fees necessarily incurred by reason of any delay or extension.

**9 FORCE MAJEURE**

- 9.1 GSES will not be liable for any breach of the Agreement due to any matter or thing beyond GSES's control. Furthermore, GSES is excused from performing any term, covenant or condition required by the Agreement during the time and to the extent that performance is prevented when such performance is prevented wholly or in part by circumstances beyond GSES's control.

**10 DEFECTS**

- 10.1 If the Client believes that the Services are not in accordance with the Agreement the Client must give notice of the defect to GSES within 30 days of delivery of the Services.
- 10.2 GSES shall not be responsible or liable for any alleged defect in the Services unless it is reported in accordance with clause 10.1.

**11 NO WARRANTY**

- 11.1 GSES makes no express warranties to the Client, except those expressly set out in the Agreement and these Terms and Conditions.
- 11.2 GSES will not be liable in any circumstances for any loss or damage whatsoever allegedly incurred and arising out of any:
- 11.2.1 Conditions, warranties and terms implied by statute or general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void;
- 11.2.2 Alleged liability to the Client in contract for consequential or indirect damages arising out of or in connection with the provision of the Services or the Agreement, even if GSES knew they were possible or they were otherwise unforeseeable, including, without limitation, lost profits and damages suffered as a result of claims by a third party; and
- 11.2.3 Claims by the Client in negligence for acts or omissions of GSES or its employees, agents, or contractors arising out of or in connection with the Agreement.

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- 11.3 Whilst GSES will use its best endeavours to ensure delivery of the Services by the date requested by the Client, it does not guarantee delivery on that date and will not be liable for any damages, loss, costs or charges incurred by the Client due to late delivery ensuing from any circumstances whatsoever, either within or beyond the control of GSES.

- 11.4 The Parties acknowledge and agree that:

- 11.4.1 any prior representations, agreements and arrangements, including representations as to the suitability of the Services;
- 11.4.2 any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure; and
- 11.4.3 all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Services for any purpose or as to design, assembly, installation, material or workmanship or otherwise, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void;

are expressly excluded from, and do not form part of, the Agreement unless specifically stated in the Agreement to the contrary.

- 11.5 If clauses 11.2, 11.4 and/or 14.1 herein are held by a court to be unlawful, invalid or unenforceable for any reason, including pursuant to the *Competition and Consumer Act 2010* (Cth), the Client agrees that GSES's total liability to the Client for any loss or damage suffered by the Client in relation to the Agreement shall not exceed the Price.

## **12 THE CLIENT'S WARRANTIES**

- 12.1 The Client warrants that it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by GSES or anyone on its behalf in respect of the Services, other than those that are expressly contained in the Agreement.
- 12.2 The Client warrants that it will not resell the whole or any part of the Services provided by GSES to a third party.

## **13 NO LIABILITY FOR THIRD PARTIES**

- 13.1 The Client acknowledges and agrees that GSES is not liable for:

- 13.1.1 any damage or defects attributable to the provision of services by a third party, including a third party engaged by GSES; or
- 13.1.2 any defects attributable to the manufacture of any goods that are manufactured by third parties.

## **14 LIABILITY AND INDEMNITY**

- 14.1 GSES shall not be liable to the Client or any other party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits, and the Client agrees that GSES may plead these Terms and Conditions as a bar to any such claims whether they arise at law, in equity, under any statute, regulation, or other legislative instrument, or under any contract, deed, or any other instrument made or approved under any law.
- 14.2 The Client hereby releases and indemnifies and agrees to keep GSES indemnified from any and all costs (including all legal fees and costs) and any other legal or other expenses incurred by it in investigating or defending any action or threatened actions (on an indemnity basis), damages, liabilities, penalties, fines, expenses or losses including indirect, incidental, consequential, punitive or exemplary loss or damage (including but not limited to loss of profit), whether resulting from breach of contract, tort, warranty, strict liability, statute or any other legal theory or otherwise that GSES may incur in relation to the Client or any third party, including where the cost, damage, liability,

penalty, fine, expense or loss is caused by or contributed to by GSES in any way or for any reason whatsoever.

- 14.3 The Client assumes all risks and liabilities for and in respect of the Services and for all injuries to or deaths of persons and any damage to property howsoever arising from the Client's use of the Services.

## **15 VARIATIONS**

- 15.1 Any variation to the Works or the Agreement must be agreed to in writing between a representative of GSES and of the Client, confirming:

- 15.1.1 the scope of the variation; and
- 15.1.2 the amount that the Client is to pay GSES for the variation; and
- 15.1.3 any change to the Price as a result of the variation.

- 15.2 The Client agrees that GSES may revise and amend the Price of the Works if there are any such variations.

## **16 CANCELLATION**

- 16.1 Any request by the Client to cancel an order must be made to GSES in writing ("**Cancellation Request**"). GSES may, in its sole discretion, accept or reject the Cancellation Request and specify any terms and reasonable charges upon which such the Cancellation Request may be agreed to.

- 16.2 If GSES agree to the Cancellation Request pursuant to clause 16.1:

- 16.2.1 the Client shall pay GSES for all Services provided by GSES, all work done by GSES, and all goods or materials used or procured by GSES and properly chargeable to the date of cancellation; and
- 16.2.2 GSES may retain any security given or monies paid by the Client, including the Deposit, and apply this in reduction of any sum of money owed or owing by the Client to GSES pursuant to this clause 16.

## **17 BREACH AND TERMINATION**

- 17.1 If the Client defaults in the due and punctual observe of all or any of its obligations, warranties or covenants under the Agreement or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then GSES may without prejudice to any other right or remedies it has:

- 17.1.1 treat as discharged all or any obligation arising from any Agreement;
- 17.1.2 retain any security given or monies paid by the Client, including the Deposit, and apply this in reduction of any sum of money owed or owing by the Client to GSES; and
- 17.1.3 take such steps as GSES may deem necessary in its sole discretion to mitigate its damages suffered including the putting to use, sale or disposal of any goods under the Agreement.

- 17.2 In addition to any other rights under the Agreement, GSES may terminate the Agreement by notice in writing to the Client immediately upon any one of the following events:

- 17.2.1 Any deliberate and substantial prevention of or interference with the provision of the Services or progress thereof caused by the Client whether directly or indirectly;
- 17.2.2 Substantial damage to or interference with the Works or access thereto by any cause beyond the control of GSES including (but without limiting in any way the generality thereof) water, flood, fire, storm tempest, rioting, earthquake, civil commotion or industrial action;
- 17.2.3 Any substantial breach of the Agreement or these Terms and Conditions by the Client;
- 17.2.4 If the Client shall make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction

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- or amalgamation) or have a receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Client's estate;
- 17.2.5 Any failure by the Client to pay any part of the Price in accordance with clause 6 herein.

17.3 If the Agreement is terminated:

- 17.3.1 the Client shall pay GSES for all Services provided by GSES, all work done by GSES, and all goods or materials used or procured by GSES and properly chargeable to the date of termination; and
- 17.3.2 GSES may retain any security given or monies paid by the Client, including the Deposit, and apply this in reduction of any sum of money owed or owing by the Client to GSES pursuant to this clause 17.

**18 NOTICES**

- 18.1 A party must give any notice required under these Terms and Conditions or the Agreement in accordance with this clause 18.
- 18.2 A notice must be served at the address or electronic mail address of the party set out in the Agreement.
- 18.3 A party may deliver a notice by hand, post, or by electronic mail.
- 18.4 If before 4.00pm local time in the place of delivery, a party delivers a notice by hand or by electronic mail and the sending party completes the transmission the notice will be taken to be given on the day of delivery or transmission, and in any other case on the next day. If the party gives notice by post the notice will be taken as given on the 7th day in the place of delivery after the notice is posted.
- 18.5 A party may give notice of another address (within Australia) or an electronic mail address for service to the other party, and the new address or the electronic mail address shall be the address for service of the party for the purposes of this clause.

**19 MISCELLANEOUS**

- 19.1 GSES, as its services, provides deliverable output files to the client in pdf format unless otherwise requested. GSES retains all working files, development files, service intellectual property and resources used to develop the output files.
- 19.2 GSES does not have any ownership over documentation provided by the client in order to complete the service.
- 19.3 The Client acknowledges and agrees that GSES may use the Works it performed for the Client for advertising and marketing purposes during or after the Agreement.
- 19.4 GSES may assign, sub-contract or sub-let the whole or any part of the Works or GSES's obligations under an Agreement, without seeking the consent of the Client.
- 19.5 The Client may not assign, sub-contract or sub-let any part of the Works, or any of its rights, liabilities, or obligations under any Agreement, without the prior written consent of GSES.
- 19.6 The covenants, agreements and obligations contained in any Agreement and these Terms and Conditions will not merge or terminate upon the repudiation or termination of the Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 19.7 Any waiver by GSES must be in writing signed by GSES. Failure by GSES to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.
- 19.8 If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms and Conditions are not affected.
- 19.9 These Terms and Conditions and the Agreement are governed and are to be construed in accordance with the laws in force in the State of New South Wales.

- 19.10 These Terms and Conditions and the Agreement are subject to the exclusive jurisdiction of the Courts of New South Wales.

**20 RECEIPT AND ADVICE**

- 20.1 The Client hereby acknowledges receipt of these Terms and Conditions and agree to be bound by them. The Client accepts these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Client further acknowledges that it has had the opportunity of obtaining independent legal advice and that the Client understands the Terms and Conditions outlined above.