



Supply Contract (Photovoltaic Modules) - Details

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| Contract Name/No. | [insert contract name or number] |
| Client ('We/Us') | [insert name] [address] ABN [insert] Tel: [insert] |
| Supplier ('You') | [insert name] [address] ABN [insert] Tel: [insert] |
| Scope of Supplier's Activities | The manufacture, supply and delivery of the Equipment at the Delivery Points and the provision of supervisory services at the Site during the installation of the Equipment by the Client or a third party engaged by the Client. [Drafting note: this description will need to be reviewed and amended for each supply package.] See Schedule 1 (Supplier's Activities) for a detailed description of the Supplier's Activities. |
| Price | The Price is: [insert price] See Schedule 3 (Price and Schedule of Rates) for breakdown of Price. |
| Commencement Date (GC Error! Reference source not found.) | The Commencement Date is [insert date] or [insert days] days from the date of signing this Contract. If nothing is stated, then the Commencement Date is the date of signing this Contract. |
| Date for Acceptance (GC 1.1) | The Date for Acceptance is [insert date] or the period of [insert period of time] after the Commencement Date. |
| Your Representative (GC3.1) | The Representative of the Supplier is: [insert details] |
| Our Representative: (GC3.2) | The Representative of the Client is: [insert details] |
| Security (GC4.5, Schedule 8) | Bank guarantee required: Yes/No Delete whichever is not applicable. Percentage of Price: [5% or 10%] |

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| Defects Liability Period <i>(GC9)</i> | The Defects Liability Period is [insert months] from the Date of Acceptance. If nothing stated, it is 12 months. |
| Additional grounds for extensions of time <i>(GC10.3)</i> | [Insert additional grounds for extensions of time, e.g. those which are project specific such as site conditions but not inclement weather] If none stated, then no additional grounds. |
| Liquidated damages <i>(GC11.1, 13.2)</i> | Delay Liquidated Damages and Performance Liquidated Damages are set out in Schedule 5 (<i>Performance Tests, Performance Guarantees and Performance Liquidated Damages</i>) and Schedule 7 (<i>Delay Liquidated Damages</i>). If none stated, then general damages at law apply. |
| Insurance <i>(GC16)</i> | Public liability: [insert amount] per occurrence. Equipment: [insert amount] per occurrence. Workers Compensation: [insert amount] per occurrence. Professional indemnity: [insert amount] per occurrence. Marine Transport: [insert amount] per occurrence. Other insurance: [insert type/amount] per occurrence. |
| Aggregate limit of liability <i>(GC17.4)</i> | [Insert limit of liability. Consider carefully for each project. Some projects may, in fact, justify a cap of higher than 100% of the Price] If nothing stated it is 100% of the Price. |
| Address for Service of Notices <i>(GC26.1)</i> | [Insert name of the Client] Attention: [insert name] Address: [insert address] [Email Address]: [insert address] [Insert name of the Supplier] Attention: [insert name] Address: [insert address] [Email Address]: [insert address] |
| Acceptance <i>(GC8.1)</i> | [Insert additional pre-conditions to Acceptance] If none stated, then no additional grounds. |
| Date of this Supply Contract <i>(Photovoltaic Modules)</i> | / / |

The parties agree to the performance of the Supplier's Activities on the terms and conditions set out in this Contract.

Executed

[Drafting note: execution blocks to be confirmed]

Executed as a deed.

Signed and delivered by **[insert]** in accordance with section 127 of the Corporations Act 2001 (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed and delivered by **[insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

General conditions

1 Performance of the Supplier's Activities

- 1.1 You must commence the Supplier's Activities on the Commencement Date.
- 1.2 You must perform the Supplier's Activities:
 - (a) exercising due care, skill and judgment and using your reasonable endeavours;
 - (b) in an efficient, professional and cost effective manner in accordance with all applicable Laws, Standards and Good Solar Industry Practices; and
 - (c) in accordance with this Contract and all guidelines, procedures and directions made by us under this Contract.
- 1.3 You must regularly and diligently progress the performance of the Supplier's Activities and complete the Supplier's Activities by the Date for Acceptance.
- 1.4 You must provide, at your own cost, all supervision, labour, equipment and materials necessary to perform and complete the Supplier's Activities, unless otherwise specified in Schedule 1 (*Supplier's Activities*).
- 1.5 You must comply with all applicable Laws and the requirements of any relevant Government Authority and ensure that you possess all relevant authorisations, permits and Licences to perform and complete the Supplier's Activities.
- 1.6 Without limiting GC 1.5, you must comply with:
 - (a) all applicable occupational health, safety and environmental Laws, guidelines and codes of practice including, without limitation, the **[insert relevant occupational health and safety legislation]**;
 - (b) all occupational health, safety and environmental guidelines, rules and procedures provided to you by us; and
 - (c) any induction requirements in relation to the Site notified by us.
- 1.7 Subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* (Cth), you must maintain, and comply with all conditions of, accreditation under the accreditation scheme established by the *Fair Work (Building Industry) Act 2012* (Cth) while building work (as defined in section 5 of the *Fair Work (Building Industry) Act 2012* (Cth)) is carried out.

[Drafting note: this clause should be used where the Contract relates to building work (as defined in the FWBI Act - note, this definition is broad and includes such things as installation of fittings such as security and

communication systems) that is funded by the Commonwealth or a Commonwealth Authority. If there is no Commonwealth funding for this project, delete this GC.]

- 1.8 You must, in a form approved by us, provide us with regular reports, or more frequently on request from us, in relation to the Supplier's Activities and any occupational, health and safety issues in relation to the Supplier's Activities and any other documents you are required to prepare or maintain under any Laws concerning occupational health, safety and the environment.
- 1.9 We may, at any time, require you to provide us with evidence of your compliance with your obligations under GCs 1.5, 1.6, 1.7 and 1.8.
- 1.10 The description of the Supplier's Activities set out in Schedule 1 (*Supplier's Activities*) represents the parties' best efforts to define the technical information and tasks necessary for performance and completion of the Supplier's Activities. However, the parties acknowledge that your obligations include the provision of all Equipment, materials, staff and labour and the performance of all works, services and supervision on and off-site which are necessary for the performance and completion of the Supplier's Activities in accordance with this Contract.
- 1.11 You must immediately notify us on becoming aware of any Industrial Matter and you must meet with us, as soon as practicable after that notification, for the purpose of discussing and agreeing on any necessary or appropriate action to be taken to resolve the Industrial Matter.
- 1.12 You must provide the Spare Parts required up to the expiry of the Defects Liability Period. You must:
 - (a) provide us with a parts numbers list for the operation and maintenance of the Equipment
 - (b) immediately replace at your cost a Spare Part used:
 - (i) at any time prior to the Date of Acceptance; or
 - (ii) during the Defects Liability Period.
- 1.13 You must procure and transport, at your own risk and expense to the Delivery Points, the Equipment in an expeditious and orderly manner and as further described in Schedule 1 (*Supplier's Activities*).
- 1.14 You must, at your own expense, handle all imported Equipment at the point(s) of import (if any) and any formalities for customs clearance, and provided that if applicable Laws require any application or act to be made by or in our name, we must take all necessary steps to comply with all applicable Laws. You must assist us in complying with those Laws.

- 1.15 You must assist us to perform our training obligations, including the preparation of a training manual, if required, in accordance with and to the standards and timing set out in Schedule 1 (*Supplier's Activities*).
- 1.16 You must prepare an operation and maintenance manual in accordance with and to the standards and timing set out in Schedule 1 (*Supplier's Activities*).
- 1.17 You must establish, implement and maintain a quality assurance and control program which is subject to our approval.
- 1.18 Except as otherwise provided in this Contract, you must supply and make available all utilities, lubricants, chemicals, catalysts, other materials and facilities and perform all works and services of any nature to properly perform and complete the Supplier's Activities.

2 Our obligations

- 2.1 We agree to pay you the Price for performing and completing the Supplier's Activities in accordance with GC 4.
- 2.2 We must provide you with possession of and access to the Site, the Delivery Points and all other areas reasonably required for the proper performance of the Supplier's Activities. You acknowledge that you may not be given exclusive possession of, or access to, the Site and the Delivery Points.
- 2.3 We must provide personnel to assist you to properly carry out the Performance Tests. Prior to the Date of Acceptance, any act or omission of any personnel provided by us, provided those personnel are acting in accordance with your instructions, directions, procedures or manuals, will be deemed to be an act or omission of you and you are not relieved of your warranties, obligations or liabilities under this Contract and you will not have any claim against us by reason of any act or omission.

3 Representatives

- 3.1 The person nominated by you in the Details will be your Representative. Your Representative has authority to issue notices to us and receive notices from us. You may change your Representative at any time by notice to us. You are responsible for all acts and omissions of your Representative.
- 3.2 The person nominated by us in the Details is our Representative. Our Representative has authority to issue directions, notices and certificates to you and receive notices from you. We may change our Representative at any time by notice to you. We are responsible for all acts and omissions of our Representative.

4 Invoicing, payment and security

- 4.1 You must submit an invoice to our Representative in accordance with Schedule 4 (*Payment Schedule*).
- 4.2 Each invoice submitted by you must be in a form approved by us and must include details of the value of the Supplier's Activities performed by you and may include details of other moneys then due to you under this Contract.
- 4.3 **[Drafting note: Insert jurisdiction-specific clause]**.
- 4.4 Subject to your compliance with GCs 4.1 and 4.2, we will pay you the amount set out in the invoice submitted by you under GC 4.1 within 15 Business Days of receipt of that invoice, except where we:
- (a) exercise our right to withhold, retain or set off part of the Price under GC 4.6; or
 - (b) dispute the invoice, in which case:
 - (i) we will pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute in accordance with GC24; and
 - (ii) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of the dispute.
- 4.5 If we request you to provide a bank guarantee in accordance with the Details, the bank guarantee to be provided by you must be:
- (a) from a financial institution that is acceptable to us;
 - (b) an irrevocable, unconditional and enforceable undertaking that is payable on demand;
 - (c) for the amount specified in the Details;
 - (d) in the form set out in Schedule 8 (*Form of Bank Guarantee*); and
 - (e) handed to us prior to delivery of the Equipment at the Delivery Points.
- 4.6 **[Drafting note: Insert jurisdiction-specific clause]**.
- 4.7 We have the right to conduct an audit of the basis of your invoices using your records. This right continues for 12 months after we pay the relevant invoice. If we exercise this right, you must make available to us all relevant records and documentation.
- 4.8 **[Drafting note: Insert jurisdiction-specific clause]**.

5 Variations

- 5.1 You must not vary the Supplier's Activities except as directed by our Representative.
- 5.2 Our Representative may by written notice expressed as a "**Variation Notice**" direct you to alter, amend, omit, add to or otherwise vary the

Supplier's Activities and you must carry out and be bound by any such variations.

- 5.3 Within 5 Business Days of receipt of the notice referred to in GC 5.2, and before you carry out the variation, you must provide to us a detailed breakdown of the increase or decrease in the Price as a result of the variation.
- 5.4 No Variation issued in accordance with this Contract will vitiate or invalidate this Contract.
- 5.5 A Variation may involve the omission of any part or parts of the Supplier's Activities and you agree that we may engage others to perform that part or parts so omitted. You acknowledge that any one or more omission will not constitute a basis to allege that we have repudiated this Contract notwithstanding the extent or timing of the omission.
- 5.6 The rate or price for each variation must be determined by agreement between the parties, or in the absence of agreement, a valuation will be made by us on the basis of the rates and prices set out in Schedule 3 (*Price and Schedule of Rates*) (including the Schedule of Rates), or if there are no applicable rates and prices set out in Schedule 3 (*Price and Schedule of Rates*) (including the Schedule of Rates), then a fair and reasonable valuation of the Variation must be made by us.
- 5.7 You are not entitled to any payment (pursuant to this Contract or otherwise at common law, equity, statute or code) in relation to any Variation unless:
- (a) you have been directed to carry out the variation pursuant to GC 5.2; and
 - (b) the increase or decrease in the Price has been determined in accordance with GCs 5.3 to 5.6.

6 Warranted Component Parts

- 6.1 You must provide warranties for Warranted Component Parts for the duration of the Warranted Component Part Period that are fully assignable to us.
- 6.2 The warranties provided under GC 6.1 must be from both the manufacturers, agents and suppliers of a Warranted Component Part and the installer of any Warranted Component Part. The warranties must also name both you and us as warrantee and warrants for the Warranted Component Part Defect Period that the Warranted Component Parts will comply with all the requirements of this Contract.

7 Serial Defects

- 7.1 You must notify us within 10 days of becoming aware of any Serial Defect, with details of such Serial Defect.
- 7.2 If a Serial Defect is identified by you or by us at any time prior to the

expiry of the Defects Liability Period in a batch of photovoltaic modules or if a particular photovoltaic module is from the same batch of photovoltaic modules in which the Serial Defect is identified, that particular photovoltaic module will be deemed to have the same defect. We may by notice in writing at any time prior to the expiry of the Defects Liability Period, direct you to replace that particular photovoltaic module and /or batch of photovoltaic modules in accordance with GC 7.3.

- 7.3 Upon receipt of a notice from us under GC 7.2, except to the extent you can demonstrate that the particular photovoltaic module is from a different batch to the photovoltaic modules in which the Serial Defect is identified, you must:
- (a) promptly, at your cost, replace the relevant photovoltaic modules identified;
 - (b) undertake such replacement at times reasonably approved by us and in a manner that causes as little disruption as reasonably possible to the performance of the Work and/or the operation of the Facility; and
 - (c) bear all incidental costs (including any costs of removal) associated with the replacement of the relevant photovoltaic modules.
- 7.4 Following replacement of the relevant photovoltaic modules under GC 7.3, we may require you to carry out additional tests at your cost, to demonstrate that the relevant photovoltaic modules and/or the entire Facility comply with the requirements of this Contract. If the relevant photovoltaic modules and/or the entire Facility fail the tests, you must at your cost carry out further replacement until the relevant photovoltaic modules and/or the entire Facility passes the tests. The tests must be agreed between us.

- 7.5 If you fail to replace the relevant photovoltaic modules and/or retest the relevant photovoltaic modules and/or the entire Facility in accordance with GCs 7.3 and 7.4, we may proceed to do the work or engage another party to do the work, and the reasonable costs incurred by us as a result will be a debt due and payable to us on demand and may be deducted from any payments otherwise due from us to you.

8 Acceptance

- 8.1 As soon as the Supplier's Activities have, in your opinion, reached the stage of Acceptance, you must give notice to us.
- 8.2 Within 10 Business Days of our receipt of your notice under GC 8.1, we will:
- (a) issue a Certificate of Acceptance stating the date on which the

- Supplier's Activities reached Acceptance; or
- (b) notify you that there are defects or deficiencies in the Equipment.
- 8.3 If we notify you there are defects or deficiencies in the Equipment, you must correct the defects or deficiencies and the procedures in this GC 8 must be repeated until we issue a Certificate of Acceptance.
- 8.4 You acknowledge and agree that:
- (a) no partial or entire use or occupancy of the Site or any Delivery Points by us in any way constitutes an acknowledgement by us that Acceptance has occurred, nor does it operate to release you from any of your warranties, obligations or liabilities under or in connection with this Contract; and
- (b) you take full responsibility for the care of the Equipment until Acceptance.
- 9 Defects Liability Period**
- 9.1 You must, at your own cost, repair, replace or otherwise make good any defects in the Equipment notified by us to you during the Defects Liability Period.
- 9.2 You must bear all incidental costs, including any costs of removal associated with the repair, replacement or making good of the defects in accordance with GC 9.1.
- 9.3 The timing of the rectification work described in GC 9.1 must be agreed with us, or failing agreement, must be reasonably specified by us, before commencing the work.
- 9.4 If you fail to rectify the defect within the time agreed or specified by us under GC 9.3, we may do so or engage another party to do so at your risk and expense.
- 9.5 Any cost incurred by us under GC 9.4 will be a debt due from you to us.
- 9.6 The Defects Liability Period will recommence (and restart from the beginning) from the date of the repair, replacement or making good of the Equipment, but only in respect of that part of the Equipment repaired, replaced or made good.
- 10 Extension of time**
- 10.1 As soon as you become aware of an incident or an event of whatsoever nature affecting or likely to affect the progress of the Supplier's Activities you must give us a written notice.
- 10.2 Within 3 Business Days of it becoming reasonably evident that the Supplier's Activities are delayed or are likely to be delayed beyond the Date for Acceptance, you must give written notice to us expressed as an "**Extension of Time Notice**" and setting out full details of the cause of the delay with supporting documents and stating a reasonable period by which you believe the Date for Acceptance should be extended.
- 10.3 Subject to the other provisions of this GC 10, you are only entitled to an extension of time to the Date for Acceptance where a delay to the Date for Acceptance is caused by any of the following events, whether occurring before, on or after the Date for Acceptance:
- (a) any act, omission or breach by us, our employees, agents or contractors;
- (b) the execution of a Variation under GC 5, except where that Variation is caused by your act, omission or breach;
- (c) an Event of Force Majeure;
- (d) a suspension under GC 22, except where that suspension is caused by your act, omission or breach; or
- (e) the occurrence of any event specified in the Details.
- 10.4 As soon as practicable after receipt of the notice in GC 10.2, we will notify you of the period, if any, by which the Date for Acceptance will be extended.
- 10.5 Despite any other provisions of this GC 10, we may, in our absolute discretion and at any time, make an extension to the Date for Acceptance. We have no obligation to grant or to consider whether we should grant an extension of time and we are not required to exercise this discretion for your benefit.
- 10.6 Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not an event which entitles you to an extension of time, then to the extent that the delays are concurrent, you are not entitled to an extension of time to the Date for Acceptance.
- 10.7 It is a condition precedent to your entitlement to an extension of time under GC 10.3 that you submit the notice strictly within the time and as required under GC 10.2.
- 10.8 It is a further condition precedent to your entitlement to an extension of time that:
- (a) you are or actually will be prevented from achieving Acceptance by the Date for Acceptance by an event listed in GC 10.3; and
- (b) the relevant delay is demonstrable on an assessment of the actual and then current critical path to achieving Acceptance by the Date for Acceptance.
- 10.9 For the avoidance of doubt you will not be entitled to an extension of time under this GC 10 to the extent that the delay was caused to by your act or omission, or acts or omissions of your agents, employees or subcontractors.
- 10.10 Any principle of law or equity (including those which might otherwise entitle you to relief) which might otherwise cause the Date for Acceptance to be set at large and render the liquidated damages unenforceable, will not apply.
- 10.11 A delay by us or the failure by us to grant a reasonable extension of time or to grant an extension of time will not cause the Date for Acceptance to be set at large.
- 10.12 We are not liable for any costs, losses or damages suffered or incurred by you arising out of or in connection with delays to the Supplier's Activities. You expressly acknowledge that you have made an allowance in the Price for the risk of bearing all costs, losses and damages which you may suffer or incur arising out of or in connection with delays to the Supplier's Activities and that you have no entitlement to bring any claim against us in respect of any such costs, losses or damages.
- 11 Delay Liquidated Damages**
- 11.1 If you fail to complete the Supplier's Activities by the Date for Acceptance, you must pay us Delay Liquidated Damages at the rate stated in the Details for each day after the Date for Acceptance up to and including the Date of Acceptance or the date this Contract is terminated, whichever occurs first.
- 11.2 The parties agree that the Delay Liquidated Damages are a fair and reasonable pre-estimate of the damages likely to be sustained by us if the Supplier's Activities are not completed by the Date for Acceptance.
- 11.3 If we are entitled to be paid Delay Liquidated Damages under GC 11.1, this does not limit our right to enforce any other remedy we may have against you.
- 12 Performance Tests**
- 12.1 You guarantee that, if we request you to carry out a Performance Test as specified in Schedule 5 (*Performance Tests, Performance Guarantees and Performance Liquidated Damages*), the Equipment and all parts will meet the relevant Performance Guarantees specified in Schedule 5 (*Performance Tests, Performance Guarantees and Performance Liquidated Damages*).
- 12.2 You must give our Representative at least 5 Business Days' notice of your intention to perform any Performance Test, which notice must include details of:
- (a) the Equipment to be tested;
- (b) the Performance Test to be performed;
- (c) the testing facility's capabilities; and
- (d) the proposed date of the Performance Test and the Performance Test location.
- 12.3 Performance Tests are to be carried out pursuant to Schedule 5 (*Performance Tests, Performance*

Guarantees and Performance Liquidated Damages).

- 12.4 Our Representative may attend and witness any Performance Test. Our Representative must use all reasonable endeavours not to interrupt or impede you in the performance of any Performance Test.
- 12.5 If a Performance Test is interrupted or terminated, for any reason, such Performance Test must be re-started from the beginning, unless otherwise approved by our Representative.
- 12.6 Your Representative or our Representative can order the cessation of any Performance Test if damage to the Equipment, or other property or personal injury are likely to result from continuation.
- 12.7 If the Equipment being tested fails to pass any of the Performance Tests (or any repetition thereof in the event of prior failure) or if any Performance Test is stopped before its completion, the Performance Test must, subject to 24 hours prior notice having been given by you to our Representative, be repeated as soon as practicable. All appropriate adjustments and modifications are to be made by you with all reasonable speed and at your own expense before the repetition of any Performance Test.
- 12.8 The results of the Performance Tests must be presented in a written report produced by you and delivered to our Representative within 5 Business Days of the completion of the Performance Tests. The results will be evaluated and approved by our Representative. In evaluation of the results, no allowance will be made for measurement tolerances.
- 12.9 You agree that neither the performance of a Performance Test nor the passing of a Performance Test releases you from any of your warranties, obligations or liabilities (including repair or replacement or any Equipment damaged during the performance of any Performance Tests) under or in connection with this Contract.
- 12.10 You must provide, install, calibrate, operate, maintain, and be responsible for the accuracy of all test instrumentation and equipment required for the Performance Tests. You must remove all of this instrumentation and equipment after the successful completion of the Performance Tests.
- 12.11 You must bear the cost of all tests (including the Performance Tests) and inspections required under this Contract (including retests) other than tests and inspections that are expressly stated to be at our cost.
- 12.12 Our Representative may request you to perform any test or inspection not described in this Contract and which would not have otherwise been carried out by you and you must arrange those tests or

inspections as soon as practicable. Your extra costs necessarily incurred, which may include an allowance for off-site overheads and profit, in the carrying out of those tests or inspections will be added to the Price only if the test or inspection shows that the relevant part of the Supplier's Activities conform with the requirements of the Contract, but are otherwise to be borne by you.

13 Failure to meet the Performance Guarantees

- 13.1 If we request you to provide Performance Guarantees as specified in Schedule 5 (*Performance Tests, Performance Guarantees and Performance Liquidated Damages*), and those Performance Guarantees are not met either in whole or in part, you must at your cost make the modifications or additions to the Equipment or any part as may be necessary to meet at least the Performance Guarantees. You must notify us upon completion of the necessary changes, modifications or additions and repeat the Performance Test until the Performance Guarantees have been met.
- 13.2 Despite any other provision of this Contract, if, for reasons not attributable to us at any time after you have repeated the Performance Tests you do not meet the Performance Guarantees, we may:
- (a) reject the Equipment or any part of the Equipment and the provisions of GC 13.3 will apply;
 - (b) require you to replace the Equipment or any part of the Equipment with all due dispatch and in compliance with the requirements of this Contract and, upon replacement, require you to repeat the Performance Tests at your cost;
 - (c) require you to pay Performance Liquidated Damages calculated in accordance with Schedule 5 (*Performance Tests, Performance Guarantees and Performance Liquidated Damages*);
 - (d) require you to grant us a reduction in the Price as may be agreed, or in default of agreement, determined to be a reasonable reduction, with reference to the ongoing delay, any incomplete Supplier's Activities and the effect on the Project (including projected revenues), under GC 24, and you must promptly pay or allow to us such reduction unless we agree otherwise;
 - (e) issue a Certificate of Acceptance notwithstanding that the Performance Guarantees have not been met. The Price will then be reduced by such amount as determined by the Representative; or

(f) terminate the Contract in accordance with GC 23.2 and, at your risk, complete or procure completion of the Supplier's Activities in accordance with this Contract.

- 13.3 If we reject the Equipment or any part of the Equipment under GC 13.2(a), we will be entitled to recover all sums paid by us in respect of such part(s) of the Equipment and you must:
- (a) allow us to use the Equipment free of charge for such period as we reasonably require for the order delivery and installation of alternative equipment, up to a maximum six month period;
 - (b) dismantle and remove those part(s) of the Equipment; and
 - (c) clear the Site and Delivery Points as appropriate.
- 13.4 The parties agree that the Performance Liquidated Damages payable under GC 13.2(c) or the extent of the reduction in Contract Price under GC 13.2(d) is a fair and reasonable pre-estimate of the damages likely to be sustained by us as a result of your failure to meet the Performance Guarantees.
- 13.5 The payment of Performance Liquidated Damages under GC 13.2(c) or a reduction in Contract Price under GC 13.2(d) does not in any way relieve you from any of your obligations to complete the Supplier's Activities or from any other of your obligations and liabilities under this Contract.
- 13.6 The Performance Liquidated Damages claimed by us must not exceed the maximum liability for Performance Liquidated Damages.
- 13.7 Without limiting any other rights we may have, we may deduct any Performance Liquidated Damages we are entitled to be paid under GC 13.2(c) or a reduction in Contract Price under GC 13.2(d) from any amounts payable by us to you under this Contract.
- 13.8 If we are entitled to be paid Performance Liquidated Damages under GC 13.2(c) or to a reduction in Contract Price under GC 13.2(d), this does not limit our right to enforce any other remedy we may have against you.
- 14 Independent contractor**
- 14.1 The parties acknowledge that you are our contractor and not our employee or agent.
- 15 Warranties**
- 15.1 You warrant that:
- (a) the Supplier's Activities will be performed with all the skill and care to be expected of appropriately qualified and experienced suppliers with experience in performing services or supplying Equipment of a similar size, type, nature and complexity to the Supplier's Activities;

- (b) the Supplier's Activities will be performed in a timely and professional manner in accordance with this Contract;
- (c) you have, and you will be deemed to have, done everything that would be expected of a prudent, competent and experienced supplier in:
 - (i) assessing the risks which you are assuming under this Contract; and
 - (ii) ensuring that the Price contains allowances to protect you against any of these risks eventuating,
 and you will not make a claim for an increase in the Price if any of those risks eventuate;
- (d) the Equipment must be new and unused, fit for the purpose and of a quality reasonably expected in the process and manufacturing industries, free from material defects and deficiencies of any kind, and free from any encumbrance or lien and must conform to the requirements set out in Schedule 1 (*Supplier's Activities*);
- (e) the Supplier's Activities will be performed and Equipment supplied in accordance with Schedule 1 (*Supplier's Activities*), for the Price and by the Date for Acceptance;
- (f) the Equipment will meet the requirements specified in this Contract, including the Performance Guarantees; and
- (g) you have read and understood our Site and Delivery Point Arrangements and Drug and Alcohol Policy, as well as any other details relating to Site and Delivery Point access contained in Schedule 2 (*Site and Delivery Points*), and that you will comply with any conditions contained therein.

16 Insurance

- 16.1 You must take out and maintain during the period of this Contract:
- (a) a comprehensive public liability policy to cover all sums which you may become legally liable to pay consequent upon:
 - (i) death of, or bodily injury (including disease or illness) to, any person; and
 - (ii) loss of, or damage to, property (including loss of use),
 in connection with the performance of the Supplier's Activities;
 - (b) insurance in respect of all claims and liabilities arising under common law or any Law relating to workers compensation or employer's liability, from death of, or bodily

injury (including disease or illness) to any person employed by you in connection with this Contract and you must ensure that all subcontractors are similarly insured in respect of their employees;

- (c) a policy of insurance against any and all liability, loss and damage of any kind whatsoever to the Supplier's Activities;
- (d) a policy of insurance to cover marine transport; and
- (e) other insurances specified in the Details, required by Law, or otherwise reasonably required by us.

The limit of liability provided by each policy must not be less than the amount specified in the Details.

- 16.2 You must ensure that all policies of insurance required to be taken out by you under this Contract include us as a named co-insured and you must do anything we reasonably request to protect us as an insured. However, if the relevant insurer refuses to include us as a named co-insured, you must ensure that the policy notes our interest under this Contract.
- 16.3 You must notify us immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects our interests.
- 16.4 Without limiting our rights under any insurance policy taken out by you in accordance with this Contract (whether as co-insured or otherwise), if an event occurs or a circumstance arises which may affect our interests and which may give rise to a claim under any insurance policy to be taken out by you under this Contract, you must:
- (a) notify us within 10 Business Days of that event;
 - (b) actively make a claim under the relevant policy and remit to us any insurance proceeds recovered by you in respect of our rights and interests under or in connection with this Contract or any liability to third parties; and
 - (c) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.

16.5 At our request, you must promptly produce evidence acceptable to us that you are maintaining the insurances required by this GC 16.

16.6 We have the right to take out and maintain any policy of insurance required by this GC 16 if you fail to do so.

16.7 You agree to reimburse us for any expenses we incur in taking out and maintaining any policy of insurance taken out by us under GC 16.6.

17 Liability and indemnities

17.1 You will be liable for and you must indemnify us against any liability and any loss or damage of any kind

whatsoever arising out of your acts or omissions whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise in relation to this Contract, except to the extent that liability or loss or damage arises out of our negligent acts or omissions.

17.2 Each indemnity in this Contract is a continuing obligation separate and independent from your other obligations and survives termination of this Contract.

17.3 Without prejudice to our right to recover Delay Liquidated Damages under GC 11, neither party will be liable to the other party in any circumstances for any indirect or consequential loss or damage.

17.4 Your total liability to us under this Contract will not exceed the amount of the aggregate limit of liability set out in the Details.

17.5 GCs 17.3 and 17.4 do not limit your liability:

- (a) under GCs 1.5, 1.6, 13.3 and 18.6;
- (b) under GC 17.1, in respect of any claim or loss in relation to personal injury, disease, illness or death; or
- (c) in cases of fraud, wilful misconduct or illegal or unlawful acts.

17.6 **[Insert jurisdiction-specific clause 17.6].**

17.7 You further agree that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Contract and not otherwise whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

18 Intellectual property

18.1 We retain the Intellectual Property Rights in the Client Background IP.

18.2 We give you a licence to reproduce and use the Client Background IP as necessary for the sole purpose of you complying with your obligations under this Contract. You must not reproduce, use or otherwise deal with the Client Background IP, or allow any other person to do the same, for any other purpose. We have the right to revoke this licence at any time by notice in writing to you.

18.3 You retain Intellectual Property Rights in the Supplier Background IP.

18.4 You give us a licence to reproduce and use the Supplier Background IP to own, operate, repair and maintain the Equipment.

18.5 You agree and acknowledge that all Project IP will be vested in and owned by us.

18.6 You warrant that performance of the Supplier's Activities in accordance with this Contract will not infringe

- the Intellectual Property Rights of any third party.
- 18.7 You agree to notify us as soon as you become aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the:
- Client Background IP;
 - Supplier Background IP; or
 - Project IP.
- 18.8 You agree to provide all reasonable assistance we may request to protect the Intellectual Property Rights in the:
- Client Background IP; and
 - Project IP.
- 19 Confidential information**
- 19.1 Each party undertakes that it will not, either during the term of this Contract or at any time thereafter (except to the extent necessary to comply with its obligations under this Contract), disclose to any person any information of or relating to the other party of which it has become possessed as a result of this Contract or the negotiations preceding this Contract including the terms of this Contract, all information and documentation supplied by you or us or information to which you or we have access in the performance of this Contract.
- 19.2 You must not publish alone or in conjunction with any other party or organisation any information, drawing or photograph concerning this Contract except with our written consent and subject to such conditions as we may prescribe.
- 19.3 Nothing in this Contract prohibits disclosure of information which:
- is in the public domain otherwise than as a result of a breach of this GC 19;
 - is received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this GC 19;
 - is required to be disclosed by Law or any Government Authority having authority over a party; or
 - is for the purposes of providing legal advice.
- 20 Taxes**
- 20.1 Should any Taxes be levied on, in respect of, or in relation to, the performance of the Supplier's Activities, these will be to your account. You will be responsible for payment of those Taxes and will immediately provide us with documentary evidence of payment if payment is made by you on our behalf.
- 20.2 Except where expressly stated otherwise, all amounts referred to in this Contract are exclusive of GST. Where any supply occurs under or in connection with this Contract, the party making the supply is entitled to increase the amount payable for the supply by the amount of any applicable GST.
- 20.3 Where under this Contract you are entitled to any adjustment to the Price, and such adjustment is based on the reasonable or actual cost to you of performing the Supplier's Activities, any input tax credits available to you, or your representative member, in relation to performing the Supplier's Activities will be deemed to reduce the cost of the Supplier's Activities.
- 20.4 Where the amount payable to a party for a supply under or in connection with this Contract or the Supplier's Activities is based on the actual or reasonable costs incurred by the party making the supply, the amount which the party making the supply is entitled to be paid will be reduced by any input tax credits available to the party making the supply, or its representative member, in respect of such costs.
- 20.5 A party will not be obliged to pay any amount in respect of GST on a supply to the other party unless and until a tax invoice that complies with the GST Legislation has been issued in respect of that supply. Each party agrees to do all things including providing invoices or other documentation, that may be necessary or desirable to enable or assist the other party to claim input tax credits to the maximum extent possible or itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Contract.
- 20.6 You acknowledge and agree that if a Law requires us to deduct an amount in respect of withholding tax from a payment under this Contract such that you would not actually receive on the due date the full amount provided for under this Contract then on the due date:
- we must deduct the amount for the withholding tax; and
 - we must pay an amount equal to the amount deducted to the relevant Government Authority in accordance with applicable Laws and give the original receipt to you; and
 - we must pay you an amount equal to the difference between the payment and the amount deducted.
- 21 Force Majeure**
- 21.1 If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Contract or is delayed in performing those obligations:
- the affected party must immediately give notice to the other party setting out full details of the Event of Force Majeure and the reasons for the Event of Force Majeure preventing that party from, or delaying that party from, performing the affected obligations under this Contract;
 - the affected obligations identified in the notice referred to in GC 21.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
 - the affected party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible.
- 21.2 Upon completion of the Event of Force Majeure, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 21.3 You have no entitlement and we have no liability for:
- any costs, losses, expenses, damages or the payment of any part of the Price during an Event of Force Majeure; and
 - any delay costs in any way incurred by you due to an Event of Force Majeure.
- 21.4 An Event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.
- 22 Suspension**
- 22.1 We have the right, at any time and for any reason, to suspend performance of your obligations under this Contract by giving you notice.
- 22.2 When you receive a notice of suspension from us in accordance with GC 22.1, you must suspend performance of the relevant obligations until such time as we direct you to resume performance of those obligations by notice in writing. At such time, you must promptly recommence the performance of those obligations in accordance with this Contract.
- 23 Termination**
- 23.1 We may terminate this Contract at any time and in our sole discretion by giving you 3 Business Days prior notice.
- 23.2 We may, by notice to you, immediately terminate this Contract if you are in breach of your obligations under this Contract, and such breach is not remedied to our satisfaction within 5 Business Days of the receipt of a notice from us.
- 23.3 Either party may terminate this Contract at any time by notice to the other party, without prejudice to any rights at law or otherwise, if either party commits an Insolvency Event.
- 23.4 You may only terminate this Contract by notice to us if we have failed to make a payment in breach

- of GC 4, and you have provided us with a notice requiring payment within 20 Business Days of the expiry of the period in GC 4.4, except with respect to any payment or portion that we dispute under GC 24.
- 23.5 If you receive a notice of termination from us, or you terminate by notice to us, you must:
- stop performance of the Supplier's Activities (except to the extent specified in the notice from us);
 - take such action as necessary or as we direct, for the transfer, protection and preservation of our property; and
 - do your best to minimise the costs of termination to us.
- 23.6 If this Contract is terminated in accordance with GCs 23.1 and 23.4, we will only be liable for the payment for the Supplier's Activities performed to the date of termination and for extra costs necessarily and reasonably incurred by you as a result of termination subject to our rights of set off.
- 23.7 If this Contract is terminated by us under GCs 23.2 or 23.3, we will only be liable for payment for the Supplier's Activities performed to the date of termination subject to our right of set off. We may employ other persons to complete or perform the Supplier's Activities. Any cost incurred by us in employing other persons to complete or perform the Supplier's Activities under this GC 23.7 which exceeds the Price will be a debt due from you to us.
- 24 Dispute Resolution**
- 24.1 If a dispute arises, the parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the dispute, and the dispute must be referred to the Representatives appointed by you and us for resolution by written notice specifying that it is a notice given under this GC 24 giving full particulars of the nature and extent of the dispute.
- 24.2 If the dispute is not resolved within 10 Business Days of a referral in accordance with GC 24.1, the dispute must be referred to a Panel for resolution. Each party must nominate a senior representative for the Panel within 3 Business Days of the referral to the Panel in accordance with this GC 24.2.
- 24.3 The Panel will determine its own procedures for the resolution of a dispute. Unless otherwise agreed by the parties, all discussions involving the Panel will be conducted on a without prejudice basis.
- 24.4 Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any unanimous decision of the Panel which is recorded in writing and signed by each member of the Panel is binding on the parties.
- 24.5 Neither party may commence legal proceedings unless:
- the parties have undertaken the processes set out in GCs 24.1 to 24.4;
 - those processes have failed to resolve the dispute or one of the parties has attempted to follow these processes and the other party has failed to participate; and
 - at least 20 Business Days have passed since the referral in accordance with GC 24.2 and the Panel has not resolved the dispute.
- 24.6 Nothing in GC 24.5 prevents a party seeking urgent injunctive relief or similar interim relief from a court.
- 24.7 Despite the existence of a dispute, the parties must continue to perform their respective obligations under this Contract.
- 24.8 This GC 24 survives the completion, expiry or termination of this Contract.
- 25 Assignment and subcontracting**
- 25.1 You must not assign or novate your rights and obligations under this Contract without our prior written consent.
- 25.2 We have the right to assign or novate any or all of our rights and obligations under this Contract.
- 25.3 You must not subcontract any of your obligations under this Contract without our prior written consent.
- 26 Notices**
- 26.1 Any notice, approval, consent or other communication in relation to this Contract must be:
- in writing;
 - marked to the attention of the relevant Representative; and
 - either:
 - left at the address set out in the Details;
 - sent by prepaid ordinary post (airmail if appropriate) to the address set out in the Details; or
 - sent by facsimile to the facsimile number of the addressee set out in the Details,
 however, if the addressee has notified a change of postal address or fax number, then the communication must be to that address or number.
- 26.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 26.3 A letter or facsimile is deemed to be received:
- in the case of a posted letter, on the fifth day after posting (seventh in the case of a letter sent by airmail); and
 - in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 27 Availability of information**
- 27.1 During the period of this Contract, and for a further 2 years, our authorised representatives are entitled to access any relevant personnel, accounts, records (including data stored in computer files), vouchers, receipts and documents of any description which belong to you, or any of your employees, agents, contractors and/or subcontractors, for the purposes of ensuring that the terms and conditions of this Contract have been complied with and that all applications for payment have been and are being made in accordance with this Contract.
- 27.2 All accounts must be maintained by you.
- 27.3 Our duly authorised representatives have the right to reproduce any relevant documents accessed under this GC 27.
- 28 Business ethics**
- 28.1 Neither you, nor any of your employees, agents, contractors and/or subcontractors, are expected, permitted or authorised to take any action on our behalf, including any action which could violate any Laws.
- 28.2 All financial statements, reports and applications for payment which are rendered by you under this Contract must completely and accurately reflect the facts about all the relevant activities, transactions and circumstances handled for the account of us.
- 28.3 You must immediately notify us in writing of any and all violations of this GC 28 upon becoming aware of such violations.
- 29 Conflict of interest**
- 29.1 You must exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with our best interests.
- 29.2 Your obligations under this GC 29 apply to the activities of your employees, agents, contractors and/or subcontractors in their relations with our employees, agents, contractors, subcontractors and/or any third parties associated with this Contract (as well as their families).
- 29.3 Your obligations under this GC 29 include, but are not limited to, establishing precautions to prevent your employees, agents, contractors and/or subcontractors from making, receiving, providing or offering gifts, payments, loans, substantial entertainment or other

considerations for the purpose of influencing individuals to act contrary to our best interests.

29.4 You must immediately notify us in writing of any and all violations of this GC 29 upon becoming aware of those violations.

30 Transfer of ownership in, and care of, the Equipment

30.1 The ownership of the Equipment transfers to us on the earlier of:

- (a) when the relevant Equipment is identified as being intended solely for incorporation, use or consumption in the Project;
- (b) where that Equipment cannot reasonably be so identified, at the time when the relevant Equipment is incorporated, used or consumed in the Project; and
- (c) payment by us of the relevant invoice for the Supplier's Activities, the value of which includes the Equipment.

30.2 The ownership of any equipment supplied in excess of the Equipment required for the Supplier's Activities reverts to you at the end of the Defects Liability Period or at any earlier time when you and us agree that the equipment in question is no longer required for the Supplier's Activities.

30.3 Despite the transfer of ownership of the Equipment, the responsibility for care and custody of, and the risk of loss or damage to, the Equipment, remains with you until the Date of Acceptance.

30.4 You are responsible for the care and custody of the Equipment, until the Date of Acceptance and must make good at your own cost any loss or damage that may occur to the Equipment, from any cause whatsoever prior to that date. You are also responsible for any loss or damage to Equipment caused by you or your suppliers in the course of the Supplier's Activities.

31 Entire agreement

This Contract constitutes the entire agreement between the parties and sets out a full statement of the contractual rights and liabilities of the parties in relation to the Supplier's Activities and no negotiations between them nor any document agreed or signed by them prior to the date of this Contract in relation to the Supplier's Activities is of any effect.

32 Other matters

32.1 Any of our rights under this Contract may only be waived by us in writing signed by a duly authorised representative of us.

32.2 This Contract may not be varied except in writing signed by a duly authorised representative of each of the parties.

32.3 We may exercise a right, remedy or power in any way we consider appropriate.

32.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.

32.5 To the extent of any inconsistency between the Details and the General Conditions, then the Details will prevail.

32.6 To the extent of any inconsistency between the General Conditions and any schedules (including any documents referred to in the schedules), then the Schedules will prevail.

32.7 To the extent of any inconsistency between the Details and any schedules (including any documents referred to in the schedules), then the Details will prevail.

32.8 The rights, remedies and powers of the parties under this Contract are in addition to any rights, remedies and powers provided by law.

32.9 This Contract may consist of a number of copies each signed by one or more parties to this Contract. When taken together, the signed copies are treated as making up the one document

33 Governing law

33.1 This Contract is governed by the laws of [*insert jurisdiction*] excluding the *Vienna Convention on Contracts for the International Sale of Goods* and the [*insert relevant sale of goods legislation*].

33.2 The parties agree to submit to the exclusive jurisdiction of the courts of [*insert jurisdiction*]. Each party waives any right it has to object to an action being brought in those courts including by claiming that action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

33.3 For the avoidance of doubt, unless expressed otherwise the rights and obligations of the parties under or in connection with this Contract are not governed by any of the Incoterms.

34 Definitions and Interpretation

34.1 In this Contract unless the contrary intention appears:

Acceptance means that stage of the Supplier's Activities when the following has occurred:

- a) the Supplier's Activities are performed and completed in accordance with this Contract;
- b) all Performance Tests and other tests required by this Contract have been passed;
- c) all documents and other information, including the Technical Materials, required under this Contract have been supplied to us in accordance with this Contract or as directed by our Representative from time to time; and
- d) any other preconditions to Acceptance set out in the Details have been met.

Business Day means a day when the banks in [*insert capital city of jurisdiction*] are open for business.

Certificate of Acceptance means the certificate of practical completion issued by us in accordance with GC 8.2(a).

Client Background IP means Intellectual Property Rights owned by or licensed to Client (including know-how and technical information) which exists prior to the date of this Contract but does not include Supplier Background IP or Project IP.

Commencement Date means the date of commencement of the Supplier's Activities as set out in the Details.

Contract means this minor supply agreement comprising the Details, the General Conditions, the schedules and any other documents referred to in the Details and the schedules.

Date for Acceptance means the date by which Acceptance must be achieved as set out in the Details, which may be extended or reduced in accordance with GC 10.

Date of Acceptance means the date certified by us as the date on which Acceptance occurred.

Defects Liability Period means the period set out in the Details.

Delay Liquidated Damages means the liquidated damages for delay specified in the Details.

Delivery Points mean the geographical locations within the Site at which the Supplier must deliver the Equipment, as specified in Schedule 2 (*Site and Delivery Points*).

Details means the section of this Contract headed "Contract Details".

Drug and Alcohol Policy means the policy set out in Schedule 2 (*Site and Delivery Points*).

EPC Contract means the engineering procurement and construction agreement between us and the EPC Contractor in relation to the Facility.

EPC Contractor means the entity that has entered into the EPC Contract with us.

Equipment means the goods, plant and machinery including the photovoltaic modules to be engineered, procured and delivered by the Supplier, and all other work to be performed and completed under the terms of this Contract, including variations, in relation to the Equipment.

Extension of Time Notice has the meaning given in GC 10.2.

Event of Force Majeure means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:

- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution,

insurrection of military or usurped power, requisition or compulsory acquisition by any Government Authority;

- b) earthquakes, flood, lightning or other physical natural disaster, but excluding weather conditions regardless of severity; and
- c) strikes at national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers but excluding any industrial dispute which is specific to Site or you or the performance of this Contract.

Facility means the [insert] MW photovoltaic power station located at [insert] and all associated infrastructure which must be designed, engineered, procured, fabricated, constructed, installed, commissioned and tested in accordance with the EPC Contract.

General Conditions mean these general conditions comprising GCs 1 to 34.

Good Solar Industry Practices means the practices followed when work is undertaken in accordance with all of the following:

- a) in a sound and workmanlike manner;
- b) with due care and skill;
- c) with due expedition and without unnecessary or unreasonable delays;
- d) in a manner which allows for this Contract to be efficiently performed;
- e) using materials of acceptable quality and merchantable quality which are fit for the purposes reasonably ascertainable from this Contract;
- f) in accordance with the Law and any Government Authority Approval; and
- g) consistently with best practice for an experienced, prudent and competent solar project contractor of the highest skill and quality.

Government Authority Approval means any authorisation, assessment, consent, approval, licence, lease, determination, ruling, permit, accreditation, registration, exemption, filing, variance, order, judgment, decree, publication, notice to, declaration of or with, or regulation by or with any Government Authority or under any Law relating to the performance of the Works or otherwise in connection with the Works (including the use of the Works), the Site or the Project.

Government Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the supply of the Equipment or the Project.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

GST means the tax payable on Taxable Supplies under the GST Legislation.

Industrial Matter means industrial action of any sort, whether threatened or actual, involving the employees of the Supplier working at or in connection with the Site.

Insolvency Event means in respect of a party:

- a) the board of the party passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- b) the party is placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);
- c) a deed of company arrangement is entered in respect of the party;
- d) an application is made to a court for the winding up of the party;
- e) the party resolves that it be wound up voluntarily;
- f) a winding up order is made in respect of the party;
- g) a receiver or receiver and manager is appointed to any substantial assets of the party;
- h) a court orders that there be a meeting of creditors or members of the party for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- i) a mortgagee takes possession of any substantial assets of the party; or
- j) the party informs the other party or any creditor of the party, in writing, that it is insolvent.

Intellectual Property Rights includes the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information.

Law means any statute, ordinance, code, law, decree, circular, rule or regulation by any Government Authority.

Licences means all licences, qualifications, registrations and other statutory requirements necessary for the performance of the Supplier's Activities under this Contract.

Panel means the panel established in accordance with GC 24.2.

parties means you and us.

party means you or us.

Performance Guarantees means all of the Performance Guarantees specified in Schedule 5 (*Performance Tests, Performance Guarantees and Performance Liquidated Damages*).

Performance Liquidated Damages means the liquidated damages for underperformance specified in the Details.

Performance Tests means the tests as specified in (*Performance Tests*) in order to ascertain whether the Equipment or a specified part is able to obtain the Performance Guarantees specified in Schedule 5 (*Performance Tests, Performance Guarantees and Performance Liquidated Damages*).

Price means the price specified in the Details and Schedule 3 (*Price and Schedule of Rates*) subject to any increases or decreases as may be made in accordance with this Contract.

Project IP means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of or in connection with the performance of the Supplier's Activities in accordance with this Contract but does not include Supplier Background IP or Client Background IP.

Project means the [insert wattage] MW solar PV power station located at [insert location].

Representative means the authorised representative nominated by each party in the Details or any other person appointed by the relevant party and notified to the other party from time to time in accordance with GC 3.

Schedule of Rates means the schedule of rates set out in Schedule 3 (*Price and Schedule of Rates*).

Serial Defect means substantially the same defect having the same root cause has been identified in 5% of a factory batch of the photovoltaic modules delivered at a Delivery Point, or ready to be shipped, to the Site for incorporation into the Facility.

Site and Delivery Point Arrangements means the Site and Delivery Point arrangements set out in Schedule 2 (*Site and Delivery Points*).

Site has the meaning given to it in Schedule 2 (*Site and Delivery Points*).

Spare Parts means the spare parts specified in **Schedule 1** (*Supplier's Activities*).

Standards means all industry standards and government regulations applicable to the Supplier's Activities.

Supplier Background IP means Intellectual Property Rights owned by or licensed to you, (including know-how and technical information) which exists prior to the date of this Contract but does not include Client Background IP or Project IP.

Supplier's Activities means the manufacture, supply and delivery of the Equipment at the Delivery Points and the provision of supervisory services at the Site during the installation of the Equipment by Client or a third party engaged by Client, as specified in the Details and Schedule 4 (*Supplier's Activities*). [**Drafting note: this description will need to be reviewed and amended for each supply package.**]

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions, imposed, levied or assessed or otherwise payable.

Technical Materials includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this Contract.

Variation means any modification, addition, omission, or other variation to, in or from the Supplier's Activities in accordance with GC 5.

Variation Notice has the meaning given in GC 5.2.

Warranted Component Part Defect means any defect in design, workmanship, materials or installation of a single or series of Warranted Component Part not

reasonably capable of being discovered by the Owner prior to the expiry of the Warranted Component Part Defect Period in the course of normal operation and maintenance of the Facility and which materially impacts on the performance of the Facility or the rate at which the Spare Parts are being or are likely to be consumed.

Warranted Component Part Defect Period means the period listed for any specific single or series of Warranted Component Parts in Schedule 6 (*Warranted Component Parts*) starting from the Commercial Operation Date.

Warranted Component Part means any Equipment or Spare Part identified in Schedule 6 (*Warranted Component Parts*).

we and **us** and **our** means the person named in this Contract as Client.

you and **your** means the person named in this Contract as the Supplier.

34.2 In this Contract unless the contrary appears:

- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;

- (b) the singular includes the plural and vice versa;
- (c) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (f) a reference to a GC or schedule is a reference to a GC or schedule in this Contract; and
- (g) the words "including" and "include" are a reference to "including, but not limited to".

34.3 Headings are inserted for convenience only and do not affect the interpretation of this Contract.

Schedule 1 Supplier's Activities

[Drafting Note: this Schedule must set out a detailed description of the Supplier's Activities Equipment to be supplied, under this Contract. The detailed description of the Equipment to be supplied must be as clear as possible and must be broken into a series of subheadings including:

- (a) any relevant background and a general description of the Supplier's Activities Equipment;**
- (b) detailed technical, design and performance requirements including design standards and operation and maintenance manuals;**
- (c) Performance Tests and any other tests to be performed and passed by the Supplier;**
- (d) any specific standards which the Supplier is expressly required to comply with;**
- (e) any specific timing, milestones and program which the Supplier is expressly required to comply with;**
- (f) the documentation that the Supplier is required to provide (e.g. manuals, Technical Material, outage reports); and**
- (g) any spare parts that the Supplier is required to provide.**

Any abbreviations must be defined and technical terms must be explained.

For example, this Schedule could be set out in the below manner.]

1. Background and general description of the Equipment to be supplied

[This section should include all relevant background information about the Equipment to be supplied at the Site. It should also include general (1-2 line) description of the Equipment to be supplied.]

2. Equipment to be supplied including Technical Requirements

[Insert detailed description of the Equipment and the Client's technical requirements and drawings and other relevant materials where applicable. This section should contain detailed specifications for the Equipment to be supplied. You must clearly identify the activities the Supplier has to undertake in order to supply the Equipment. Consider:

- the order in which deliveries must be carried out;**
- are there any activities that the Client will be performing during the contract term;**
- technical specifications that the Equipment must meet.]**

3. Standards and procedures

You must comply with the following standards: **[List any recognised standards or Client Site standards with which the Supplier must comply while performing the Supplier's Activities. Quality assurance requirements should be included in this section.]**

You must comply with the following procedures: **[List any procedures with which the Supplier must comply in performing the Supplier's Activities.]**

4. Testing

[Drafting Note: it is extremely important to incorporate accurate testing requirements as part of this Contract. Achieving acceptable test results is one of the conditions to Acceptance, which determines when the Client will have to pay the Supplier. It is preferable that the Client be required to pay the Supplier when the Client is satisfied that the Equipment supplied by the Supplier will achieve the results needed by the Client. The type of tests and the type of results that will be acceptable to the Client should therefore be clearly described in this Contract.]

5. Documentation

[Insert relevant documentation.]

6. Timing, Milestones and Program

You must comply with the following timing requirements: **[List the Client's timing requirements (if any)]**

You must achieve the following milestones: **[List milestones to be achieved (if any)]**

You must comply with the following program: **[List the program to be complied with (if any)]**

[Drafting Note: if there is too much information to be physically included in this Schedule, you can incorporate the appropriate documents by reference. If this is done, you must clearly identify the documents by author, title, date and revision number. Take care not to include parts of documents that do not relate to the Supplier's Activities.]

[In preparing this Schedule, you should take extreme care to ensure that all of the Equipment which the Client wants the Supplier to supply are included in order to reduce the likelihood of disputes at a later date, and to reduce the likelihood that suppliers may seek to profit from variations in the future.]

Schedule 2 Site and Delivery Points

[Drafting Note: this Schedule must set out a detailed description of the Site and the Delivery Points where the Supplier must deliver the Equipment. An example of the form of Schedule is below.]

1. Description of the Site and Delivery Points

[Insert Site details including address and include or refer to drawing numbers or maps of the Site and details of the actual Delivery Points at the Site where the Supplier must deliver the Equipment.]

2. Other sites

[Insert details of other sites, if any, which about the Site and which the Supplier needs information in order to deliver the Equipment at the Delivery Points.]

3. Access to the Site and Delivery Points

[Insert details of access and any conditions which may impact on access to the Delivery Points of which the Supplier should be aware.]

4. Site and Delivery Point Arrangements

Our Site and Delivery Point Arrangements are as follows: **[insert].**

You acknowledge that you have read and understood our Site and Delivery Point Arrangements.

5. Drug and Alcohol Policy

Our Drug and Alcohol Policy is as follows: **[insert].**

You acknowledge that you have read and understood our Drug and Alcohol Policy.

Schedule 3 Price and Schedule of Rates

[Drafting Note: this Schedule must set out the Price and a detailed breakdown of the Price. If there are any provisional sums they must be described in detail in this Schedule. This Schedule must also set out under a separate heading "Schedule of Rates", any schedule of rates. If rates and prices are included only for the purpose of valuing variations, this must be made clear. If there are no rates and prices, you should insert "Not applicable" under the heading "Schedule of Rates".]

1. Price

[Insert the clearest breakdown of the Price that you can obtain. This may be in tabular form.]

2. Schedule of Rates

[Insert any applicable schedule of rates.]

3. Provisional sums

[Provide clear details of any provisional sums that may apply to the contract and the activities to which those sums relate.]

Schedule 4 Payment Schedule

[Drafting Note: various payment options are listed below. Appropriate option to be discussed, you may also wish to back end the payment in the Payment Schedule and include an amount which will be paid a certain number of days after Acceptance or on the expiry of the Defects Liability Period.]

Option 1 - Monthly Progress Payments

On the [**insert date**] of each month (or as otherwise agreed by us) you must submit an invoice to our Representative.

Option 2 - Milestone Payments

Within [**insert days**] of completion of each milestone set out in the milestone payment schedule below, you must submit an invoice to our Representative for the relevant amount payable on achievement of the milestone.

[insert milestone payment schedule]

Option 3 - Lump Sum Payment

Within [**insert days**] of completion of the Supplier's Activities, you must submit an invoice to our Representative for the relevant amount payable on completion.

Schedule 5 Performance Tests, Performance Guarantees and Performance Liquidated Damages

Note:

This Schedule must set out the Performance Tests, Performance Guarantees, and Performance Liquidated Damages payable by the Contractor if the Facility fails to achieve the Performance Guarantees based upon the performance ratios tested.

With respect to the Performance Liquidated Damages, to ensure there is no risk in a court interpreting GC 13 as a penalty and invalidating it or reading it down, it is important that the reasoning and specific facts known to the parties which support their conclusion given at GC 13.14 that the price reduction payment or liquidated damages amount is a fair and reasonable pre-estimate of the damages flowing from not achieving the Performance Guarantee.

Another option is to base the damages on a formula or set separate amounts for various breaches or triggering events, and select an amount that reflects the seriousness of each breach or event. Where appropriate, a scale of graduated amounts of liquidated damages may be used to reflect the increasing financial consequences in circumstances such as repeated instances of non-compliance with the Performance Guarantee

1. PERFORMANCE TESTS

(a) Commercial Operation Performance Tests

[Generally, the Performance Tests on Commercial Operation would test the nameplate capacity of the Facility, the output capacity of the Facility and the performance ratio of the facility. You should develop the testing framework in conjunction with your technical advisers to match the requirements of the PPA (if any) and to align with the technology to be utilised]

(b) Post-Commercial Operation Performance Tests

[Generally, the Performance Tests after Commercial Operation would test the performance ratio of the Facility. You should develop the testing framework, including the number of tests and their timing (e.g. 1 or 2 years post Commercial Operation) in conjunction with your technical advisers to match the requirements of the PPA (if any) and to align with the technology to be utilised]

2. PERFORMANCE GUARANTEES

(a) Commercial Operation Performance Guarantees

[The level at which the Commercial Operation Performance Guarantees and Post-COD Performance Guarantees are set will vary based on factors such as the financial model for the project (i.e. required IRR and other measures) and any requirements under the PPA. This will need to be worked through with your technical and financial advisers]

(b) Minimum Commercial Operation Performance Guarantees

[The level at which the Minimum Commercial Operation Performance Guarantees will be based on the minimum revenue to be generated by the Facility in order for it to be sustainable. This will need to be worked through with your technical and financial advisers]

(c) Post-COD Performance Guarantees

[As above. Note that if the Commercial Operation Performance Guarantees are not met and a Price Reduction Payment is made, the level of the Post-COD Performance Guarantees will need to be adjusted to reflect this and to ensure that the Owner is not compensated twice for the same loss.]

3. PRICE REDUCTION PAYMENT AND PERFORMANCE LIQUIDATED DAMAGES

(a) Price Reduction Payment

[The purpose of the Price Reduction Payment is to ensure that the Owner is compensated for the loss of the anticipated future revenues from the Facility for failure to meet the Commercial Operation Performance Guarantees, calculated on an NPV basis. As noted above, the level at which this is set

will need to be worked through with your technical and financial advisers to reflect the financial model and technical aspects of the project. The Price Reduction Payment will be a lump sum amount, generally calculated by reference to a formula]

(b) Performance Liquidated Damages

[As above. Performance Liquidated Damages will be specified as a daily amount payable]

Your aggregate liability for Performance Liquidated Damages will not exceed [insert]% of the Price.

Schedule 6 Warranted Component Parts

[Drafting Note: This Schedule must set out the key items of equipment for which warranties are available. For a solar PV Facility this would generally include the photovoltaic modules, transformers and (if used) trackers as a minimum, and ideally would also include additional equipment such as cabling and mounts. Again, this will be a point to be negotiated with the Contractor.]

| Warranted Component Parts | Warranted Component Part Periods |
|----------------------------------|---|
| [insert] | [insert] |
| | |
| | |
| | |

Schedule 7 Delay Liquidated Damages

[Drafting Note: this Schedule must set out the Delay Liquidated Damages to be paid per day. Consider the Client's exposure financing costs, internal costs and existing pre-commitments. A sample DLD regime is set out below and the figures to be inserted are likely to be a source of negotiation between the Client and the Supplier.]

The Supplier must pay to the Client Delay Liquidated Damages in the amount of **[insert amount]** per day from the Date for Acceptance to the earlier of the Date of Acceptance and the date this Contract is terminated up to a limit of **[insert]**% of the Price.

- OR -

The Supplier must pay to the Client Delay Liquidated Damages in the amount of **[insert amount]** per day for each day beyond the Period of Time for Acceptance to the earlier of the Date of Acceptance and the date this Contract is terminated up to a limit of **[insert]**% of the Price.

[Delete whichever is not applicable]

Cap on Delay Liquidated Damages and Performance Liquidated Damages

Despite the aggregate liability of the Supplier for Performance Liquidated Damages specified in Schedule 5, the aggregate liability of the Supplier for Delay Liquidated Damages and Performance Liquidated Damages will not exceed **[insert]**.

Schedule 8 Form of Bank Guarantee

[Drafting note: for certain packages you may decide it does not require a bank guarantee. If there is no bank guarantee provided under the Contract, then you should insert "This page is intentionally blank." into this Schedule.]

BANK GUARANTEE

[On the letterhead of the Bank]

Date: **[insert]**

To: **[Employer]**

[address]

Dear **[Insert]**

[Insert Project] Supply Contract – Bank Guarantee

You entered into a contract dated **[insert date]** with **[insert]** (**Supplier**) titled Supply Contract (**Photovoltaic Modules**) for the supply of certain Equipment (**Equipment**) and the performance of all activities related to the supply of the Equipment (**Supplier's Activities**) to be performed by the Supplier (**Contract**).

The Contract contains an obligation on the part of the Contractor to provide a Bank Guarantee in the amount of **[5 or 10]**% of the Price of **[insert]**.

We, **[insert Bank]**, irrevocably and unconditionally undertake with you that whenever you give written notice to us demanding payment, we will:

- (a) without any right of set-off or counterclaim;
- (b) without reference to the Contractor, any other person or the Contract;
- (c) without enquiring into the performance or non-performance of the Contract;
- (d) without reference to the correctness or validity of the written demand; and
- (e) despite any notice by the Contractor or any other person not to pay the whole or any part of the Guaranteed Sum,

immediately pay to you or as you may direct such an amount as you may in that notice require not exceeding (when aggregated with any amount(s) previously so paid) the sum of **[insert]** (**Bank Guarantee**).

This Bank Guarantee is valid from the date of this letter in its full amount of **[insert]**. Our liability under this Bank Guarantee will be a continuing liability and continues to be fully valid with respect to any written notice to us referred to above until the earlier of:

- (a) us receiving written notification from you that this Bank Guarantee is no longer required by you;
- (b) until this Bank Guarantee being returned to us; or
- (c) until payment to you by us of the whole sum of **[insert]**.

We may at any time without being required to do so pay you the sum of **[insert]** less any amount or amounts which we have previously paid under this Bank Guarantee.

Any payment by us in accordance with this Guarantee will be in immediately available and freely transferable US Dollars free and clear of and without any deduction for or on account of any present or future Taxes, levies, imposts, duties, charges, fees, set off, counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed.

Our obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations. Our obligations will not require any previous notice to or claim against the Contractor and will not be discharged or otherwise prejudiced or adversely affected by anything, including:

- (a) waiver, time, lenience or tolerance which you may grant to the Contractor, or the discharge or release of any person;
- (b) breach or breaches of the Contract by the Contractor or you;
- (c) amendment, modification or extension which may be made to the Contract or the Works performed under the Contract (with or without our knowledge or consent);
- (d) intermediate payment or other fulfilment made by us;
- (e) change in the constitution or organisation of the Contractor; or
- (f) other matter or thing which in the absence of this provision would or might have that effect.

This Bank Guarantee may not be assigned by you to any person, firm or company other than an Affiliate, without our prior written consent, which must not be unreasonably withheld. We hereby consent to:

- (a) you assigning this Bank Guarantee to your lenders or to the security agent appointed by your lenders and we undertake that we will acknowledge such assignment; and
- (b) the grant of security by you to **[insert]**.

You must notify us in writing of any assignment, after which we must make any payment claimed under this Guarantee to the person, firm or company specified in the notice which will constitute a full and valid release by us in relation to that payment.

Any notice required by this Guarantee is deemed to be given when delivered (in the case of personal delivery) or 96 hours after being despatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties.

This Guarantee is governed by and construed in accordance with the laws of **[insert jurisdiction]** and we agree to submit to the exclusive jurisdiction of the courts of **[insert jurisdiction]**.

This Guarantee is executed by us.

IN WITNESS of which the **[insert Bank]** has duly executed this Guarantee on the date stated above.

Executed.

[Drafting note: execution blocks to be confirmed]

Signed and delivered by **[insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Address for notices: **[Insert address]**

