

Purchase Order

This Purchase Order constitutes an offer from the Customer to the Supplier. The purchase of the Goods and/or Services by the Customer is subject to the terms and conditions of this Purchase Order.

1. General

1.1. Definitions

day means a calendar day.

Customer means United Energy Distribution Pty Ltd (ABN 70 064 651 029).

Defect Period means the period commencing on the date of final delivery of the Goods to the Delivery Point and continuing for a period of three years from the date of delivery of the Goods in accordance with clause 5.1.4, unless otherwise stated in this Purchase Order.

Delivery Point means the point nominated by the Customer in writing for where the Goods are to be delivered.

Goods means all goods, equipment, materials, articles or any other property or parts to be supplied to the Customer by the Supplier under this Purchase Order.

GST means goods and services tax, as defined in the GST Act as amended and updated from time to time.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property means all rights conferred under statute, common law or equity in and in relation to registered and unregistered trade marks, any copyright, designs, patents, circuit layouts, plant varieties, business and domain names, and confidential information.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means the Privacy Act, including the National Privacy Principles and all other applicable privacy legislation.

Purchase Order means this purchase order which includes the standard terms and conditions set out in this document, any specifications and drawing(s) attached or referred to herein, any quotations for the Goods or Services to be purchased under this purchase order and any other attachments, annexures or schedules to that quotation or this Purchaser Order.

related body corporate has the meaning given to it under the *Corporations Act 2001* (Cth) and for the purpose of this Purchase Order, the following are all related bodies corporate of each other:

- (a) United Energy Distribution Pty Ltd (ABN 70 064 651 029);
- (b) the Multinet Gas Distribution Partnership (ABN 53 634 214 009) acting on behalf of Multinet Gas (DB No 1) Pty Ltd (ABN 66 086 026 986) and Multinet Gas (DB No 2) Pty Ltd (ABN 57 086 230 122); and
- (c) UE & Multinet Pty Ltd (ABN 31 093 273 851).

Services means all services to be provided under this Purchase Order including, without limitation, any designing, manufacturing, inspecting, testing (including any quality assurance and control testing), packing, delivery, installation, fixing required or as otherwise specified under this Purchase Order, and any other services incidental to those services.

Supplier means the person supplying the Goods and/or Services specified in this Purchase Order.

1.2. Interpretation

- 1.2.1. Words importing the singular include the plural and vice versa.
- 1.2.2. Words importing a gender includes any other gender.
- 1.2.3. The reference to "\$" is a reference to the Australian dollar
- 1.2.4. Words denoting a natural person will include an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association.
- 1.2.5. Headings and subheadings are for convenience only and do not affect interpretation.
- 1.2.6. No rule of construction shall apply to the disadvantage of any party on the basis that that party prepared, or seeks to rely on, this Purchase Order or any part of it.

1.3. Entire agreement

- 1.3.1. The Customer may modify these terms and conditions at any time. Any changes to these terms and conditions will be effective from the date they are made available on the Customer's website. It is the Supplier's responsibility to keep itself up-to-date on the terms and conditions which apply to its supply under this Purchase Order at any particular point in time.
- 1.3.2. This Purchase Order constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter, including, and despite any contrary terms of, any previous agreement between the parties under which the Supplier provides the Goods and/or Services to the Customer.

1.4. Supplier to inform itself

Upon acceptance of this Purchase Order in accordance with clause 1.5, the Supplier will be deemed to:

- (d) have carefully examined this Purchase Order and all documents provided by the Customer; and
- (e) be fully satisfied regarding all the terms and conditions, risks, contingencies and other circumstances which might affect the supply of the Goods and/or Services.

1.5. Acceptance of this Purchaser Order by the Supplier

The Supplier will be deemed to have accepted this Purchase Order on the earlier of:

- (a) its express date for acceptance (if given);
- (b) the Supplier's acknowledgement of this Purchase Order;
- (c) the Supplier's commencement of work on the Goods or performance of the Services; or
- (d) the Goods and/or Services being delivered to the Customer in accordance with this Purchase Order.

1.6. Waiver

A provision of this Purchase Order, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

1.7. Compliance with laws

In performing its obligations under this Purchase Order the Supplier agrees to comply with all applicable legislation,

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regulations, ordinances, laws, by-laws, proclamations, orders, rules, codes and requirements of government and other authorities.

2. Quality

2.1.1. The Supplier warrants that the Goods will:

- (a) be suitable and fit for the purpose for which they are required;
- (b) be of acceptable quality;
- (c) comply with the standards of quality specified in this Purchase Order, and, if no standards are specified, of the best quality standards (whether at law or otherwise) applicable;
- (d) be new and comprised of new and undamaged materials; and
- (e) comply with all applicable laws and good industry practice.

2.1.2. The Supplier warrants that it will:

- (a) provide the Services in an efficient and professional manner and in accordance with any directions issued by the Customer;
- (b) unless otherwise stated, provide all necessary personnel, equipment, tools and sundry items to perform the Services;
- (c) to the extent relevant, cooperate and work collaboratively with the Customer and its contractors in providing the Services;
- (d) possess all relevant authorisations, permits and licences required by law to perform the Services; and
- (e) comply with all applicable laws and good industry practice in providing the Services.

2.1.3. The Supplier represents and warrants to the Customer (and the Customer relies on these representations and warranties in entering into this Purchase Order) that it has the necessary qualifications, skills, experience and resources to successfully provide the Goods and/or Services in accordance with the requirements of this Purchase Order.

2.1.4. If requested by the Customer, the Goods must be tested in accordance with the requirements of the specifications (if any), law and good industry practice. Such tests and associated costs are the responsibility of the Supplier.

2.1.5. The Customer has the right to inspect and obtain updates about the Goods prior to delivery and the Supplier will give the Customer access to the Supplier's premises for such purposes during its normal working hours upon reasonable prior notice from the Customer.

2.1.6. The Goods will not be accepted by the Customer until inspected and approved by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of this Purchase Order and will not impair the Customer's right to require subsequent rectification of non-conforming or defective Goods.

3. Access

3.1.1. The Customer will use reasonable endeavours to provide to the Supplier access to any of its facilities, premises and assets (including remote access, where necessary)

reasonably required by the Supplier to perform the Services under this Purchase Order.

3.1.2. In accessing the Customer's facilities, premises and assets under this clause 3, the Supplier must comply with the Customer's rules, policies and procedures at all times. Without limiting any other rights the Customer may have under this Purchase Order, the Customer may require the Supplier or any of its personnel or contractors to immediately cease accessing its facilities, premises and assets where, in the Customer's opinion, the Supplier is in breach of its obligations under this clause 3.1.2.

4. Defects and warranty

4.1.1. In addition to any statutory warranties applicable to the Goods, the Supplier represents and warrants that the Goods will:

- (a) be free from liens, charges, encumbrances, mortgages or other defects in title;
- (b) be free from defects in design, materials and workmanship;
- (c) conform to the terms, conditions and specifications of this Purchase Order;
- (d) comply with all applicable laws and regulations; and
- (e) be new and made to the specified quality.

4.1.2. During the Defect Period:

- (a) the Customer will give written notice to the Supplier identifying any failure or defect in the Goods and requiring rectification within a specified period (which must be reasonable);
- (b) following receipt of such notice, the Supplier must without delay, and at no cost to the Customer, correct the specified defect or failure in the Goods, by way of repair, replacement, modification or other means acceptable to the Customer; and
- (c) if the Supplier fails to correct the specified defect or failure within the specified period, the Customer will have the right to rectify the Goods itself or have the rectification undertaken by a third party. The Supplier agrees to pay for all costs incurred as a result of such rectification, and permit the deduction of such costs from monies which would otherwise be due to the Supplier.

5. Delivery

5.1.1. The nominated date(s) of delivery by the Customer is of essence to this Purchase Order. The Supplier will take all reasonable steps to minimise and prevent any delay to the delivery of the Goods and/or performance of the Services.

5.1.2. The Goods will be delivered without charge to the Customer for packing, crating or transporting the Goods to the Delivery Point.

5.1.3. The Goods will be adequately packaged and protected to ensure safe delivery to the Delivery Point and by the delivery date(s) specified by the Customer.

5.1.4. Delivery will only be deemed to have been completed when the Goods have been accepted by the Customer, as evidenced by the signature on a delivery docket (accompanied with the Goods) by an authorised representative of the Customer at the point of Delivery Point.

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- 5.1.5. Title in the Goods will pass to the Customer upon delivery of the Goods to the Customer in accordance with clause 5.1.4.
- 5.1.6. The Supplier will bear all risks associated with the Goods until completion of delivery to the Customer in accordance with this Purchase Order. The Supplier will be liable for any loss or damage to the Goods which may have occurred prior to delivery, and for any non-compliance of the Goods with the terms and conditions and requirements of this Purchase Order.
- 5.1.7. If the Supplier fails to deliver the Goods and/or Services by the specified delivery date(s), the Customer will be entitled to terminate this Purchase Order for default, either in whole or in part, in accordance with the provisions of clause 7.2.1, or deduct a fair and reasonable sum as general damages from monies due to the Supplier, having regard to the period of delay.
- 6. Variations**
- 6.1.1. The Supplier will not vary this Purchase Order, except as directed and approved by the Customer in writing. Any direction to vary this Purchase Order by the Customer will only be accepted as valid if confirmed in writing by the Customer. No variation will invalidate this Purchase Order.
- 6.1.2. The Customer may vary the work under this Purchase Order and the Supplier will carry out any such variation as directed in writing by the Customer. Any change to the Supplier's price for any variation and any effect on the delivery date(s) of the Goods and/or Services will be agreed between the Customer and Supplier, prior to the Supplier carrying out the variation. However, if agreement is not reached within a reasonable time, the Customer will, acting reasonably, determine the price for the variation and its effect on the delivery date(s) of the Goods and/or Services.
- 7. Suspension and Termination**
- 7.1. Suspension**
- 7.1.1. The Customer may, at any time by written notice, suspend all or part of this Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice.
- 7.1.2. The Supplier will recommence the work under this Purchase Order within 48 hours of being directed to do so by the Customer in writing.
- 7.1.3. In the event of suspension of this Purchase Order upon direction of the Customer, the Supplier will be entitled to reimbursement from the Customer for any reasonable, verifiable, out-of-pocket costs it may incur as a result of any such suspension subject to the Supplier having an obligation to mitigate all such costs. The Supplier will not be entitled to any prices or fees for any Goods or Services it provides in the period of suspension except where the Customer has directed the Supplier to provide such Goods or Services during this period.
- 7.2. Termination for default or insolvency**
- 7.2.1. In the event of a breach by the Supplier of any of the terms and conditions of this Purchase Order, the Customer may, by written notice to the Supplier, terminate this Purchase Order in whole or in part.
- 7.2.2. If, in the opinion of the Customer, the Supplier is unable to effectively perform its obligations under this Purchase Order due to insolvency, bankruptcy or related reasons, the Customer will be entitled to terminate this Purchase Order, by written notice to the Supplier.
- 7.2.3. In the event of insolvency of the Supplier or its default under clause 7.2, the Customer will immediately suspend any further payment to the Supplier.
- 7.2.4. Upon termination of this Purchase Order, the Supplier will pay any additional costs incurred by the Customer arising from the Supplier's default or insolvency.
- 7.3. Termination at the Customer's option**
- Notwithstanding any other provisions of this Purchase Order, the Customer may at any time, terminate this Purchase Order in whole or in part upon giving written notice to the Supplier.
- 8. Price and Payment**
- 8.1. Prices**
- 8.1.1. Prices are fixed and not subject to any variation, including but not limited to, variations in the cost of labour, material or exchange rates unless otherwise agreed between the Parties in accordance with this Purchase Order. Unless otherwise stated in this Purchase Order (including in a quotation), the price for the Goods and/or Services includes GST.
- 8.1.2. The Supplier is responsible for the payment of all relevant Australian and foreign taxes (including GST), duties and charges payable with respect to the Goods and/or Services. The Purchase Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 8.1.3. Where the Supplier receives any reimbursements or tax exemptions for the Goods or Services by reason of the nature of the Customer's business, the Supplier must pass on such reimbursements or tax exemptions to the Customer.
- 8.1.4. The Customer will not pay invoices for taxable supplies from 1 July 2000, which does not satisfy the tax invoice legislative requirements.
- 8.1.5. Subject to clause 8.1.6, the Customer will pay the Supplier any undisputed amount set out in the invoice within 60 days of receipt of that invoice. Payment by the Customer does not imply or constitute an admission on the part of the Customer that the Goods and Services have been properly provided or performed in accordance with this Purchase Order or a waiver or release of the Supplier's obligations under this Purchase Order.
- 8.1.6. Where the Customer disputes an amount in an invoice, it will notify the Supplier of the nature of the dispute and the parties will negotiate in good faith to resolve that dispute.
- 8.2. GST**
- 8.2.1. The Supplier further acknowledges and agrees as follows:
- (a) to the extent the Supplier makes a taxable supply, it must provide the Supplier with a tax invoice at the time of supply and, despite anything to the contrary in this Purchase Order, is not entitled to be paid any amount by the Customer until it has provided a tax Invoice in accordance with the GST Act;
- (b) if there is an adjustment event in relation to a supply which results in the amount of GST on a taxable supply being different from the original

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amount in respect of GST, the supplier within 14 days of becoming aware of the adjustment event:

- (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days written notice; or
- (ii) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
- (iii) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event.

8.2.2. The right of the Supplier to recover any amount in respect of GST on a taxable supply under this Purchase Order is subject to the issuing of a tax invoice or adjustment note to the Customer.

8.2.3. Costs incurred by the Supplier that are required to be reimbursed or indemnified by the Customer, or used as the basis for calculation of consideration for a taxable supply, under this Purchase Order must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

8.2.4. In this clause, the terms **GST**, **tax invoice** and **adjustment note** have the meaning given in the GST Act

8.3. Invoices

8.3.1. Following delivery of the Goods and/or Services in accordance with this Purchase Order, the Supplier must submit correctly rendered invoice(s) to the Customer's nominated invoice address for payment.

8.3.2. A correctly rendered invoice must, at a minimum, comply with the requirements under the GST Act and also contain the following information:

- (a) vendor number allocated to the Supplier by the Customer;
- (b) to the extent applicable, include a statement that the payment claim is made under the *Building and Construction Industry Security of Payment Act 2002 (Vic)*;
- (c) Delivery Point, date and dispatch docket number; and
- (d) the Purchase Order number which was notified to the Supplier by the Customer for this Purchaser Order.

Incorrectly rendered invoices will be returned for correction, thereby delaying payment.

8.3.3. The Customer will pay valid and correctly rendered invoices within 60 days from the date such invoice is received by the Customer or such other date as expressly agreed by the Customer in writing.

9. Insurance and Indemnification

9.1.1. The Supplier must maintain adequate public liability insurance cover, motor vehicle insurance, including third

party property damage cover and any other insurance required to be held by the Supplier under law. The Supplier is responsible for ensuring it complies with its occupational health and safety obligations.

9.1.2. The Supplier must indemnify and keep indemnified the Customer against all damages, actions, claims, demands, suits, liabilities, losses, costs, expenses (including legal fees on an indemnity basis), debts, penalties or fines suffered or incurred by the Customer whatsoever (including indirect and consequential losses), arising out of or related to any act, omission, fraud, negligence, accident, default or breach by the Supplier or its employees, agents, officers or contractors, under or related to this Purchase Order.

10. Subcontracting and Assignment

The Supplier will not subcontract or assign all or any part of this Purchase Order without the prior written approval of the Customer. The Supplier must provide full particulars of any work to be subcontracted together with details of the proposed subcontractor. Approval of the Customer to any subcontract will not relieve the Supplier of any of its obligations under this Purchase Order.

11. Intellectual Property, Privacy and Confidentiality

11.1.1. The Supplier grants to the Customer, its related bodies corporate and its contractors an irrevocable, non-exclusive, royalty free licence to use, reproduce, modify and adapt any Intellectual Property subsisting in the Goods or Services.

11.1.2. The Supplier warrants that the sale and use of the Goods by the Customer and any other third party will not infringe or contribute to the infringement of any Intellectual Property. The Supplier will indemnify the Customer against any loss or damage whatsoever (including indirect and consequential losses) arising out of or related to a breach of this clause 11.1.1 including in respect of third party claims.

11.1.3. The parties will comply with their obligations under any applicable Privacy Laws (if any).

11.1.4. Any information provided by the Customer to the Supplier which is noted as confidential or is by its nature confidential will not be disclosed by the Supplier to any third party without the prior written consent of the Customer.

12. Disputes

12.1.1. Disputes between the Parties will be settled promptly and in good faith. The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Parties

12.1.2. In the event of any unresolved dispute between the Parties, the Supplier will ensure that the progress of the work under this Purchase Order is continued, without any effect on the specified delivery date.

13. Applicable Law

The Purchase Order is governed by and construed in accordance with the laws in force in the State of Victoria, and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria.

14. Miscellaneous

14.1.1. Clauses 2, 4, 7.2, 7.3, 9, 10, 11, 12, 13 survive the expiry or termination of this Purchase Order.

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- 14.1.2. All notices in connection with this Purchaser Order must be in writing, but may be delivered via email or other means agreed between the parties, to the details notified by the parties in writing from time to time. Unless a later time is expressly specified, notices take effect from the time they are received. If sent by post, notices are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).
- 14.1.3. This Purchase Order will not be construed as:
- (a) constituting a partnership, joint venture, relationship of agency or any relationship between the Customer and the Supplier other than that of independent contractors;
 - (b) creating any form of legal association between the Customer and the Supplier that would impose liability upon one for the act or failure to act of the other, or any form of a fiduciary relationship or duty between them; or
 - (c) granting the Customer or the Supplier the right, power, or authority (express or implied) to create any duty or obligation for the other.