

## TERMS AND CONDITIONS

### West Power Group Pty Ltd (ACN 168 642 742)

#### 1. General

These terms and conditions ('**Terms**') apply to all Contracts between West Power Group Pty Ltd (ACN 168 642 742) ('**West Power Group**') and the Customer, whether signed or not, for the sale and purchase of goods, including, but not limited to diesel generators, diesel fuel systems and load banks ('**Goods**') and all installation and maintenance services ('**Services**').

#### 2. Interpretation

Nothing in these Terms exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

#### 3. Definitions

- (a) **Actual Delivery** means the date the Goods are delivered to the Customer.
- (b) **Business Day** means a day on which banks are open for business in Perth, Western Australia.
- (c) **Business Hours** means the hours specified in the Contract Documents or, if none are specified, the hours between 9.00am and 5.00pm on a Business Day.
- (d) **Commission** means the testing and installation of Goods at the Site on the Commission Date.
- (e) **Commission Date** means the date Commissioning occurs.
- (f) **Contract** means these Terms together with the Quote provided by West Power Group to the Consumer for the sale and purchase of Goods and Services, including any special conditions and schedules attached thereto.
- (g) **Confidential Information** means in respect of the Contract that:
  - (i) Is by its nature confidential; or
  - (ii) Is specified by West Power Group or the Customer to be confidential, including any information specified to be confidential in the Contract Documents; or
  - (iii) The Customer knows or ought to know is confidential
- (h) **Customer** means the party identified in the Quote.
- (i) **Delivery Date** means the date for delivery of Goods, as may be specified in the Quote.
- (j) **Deposit** means the deposit amount that the Customer is required to pay to West Power Group, as set out in the Quote or such other amount as may be requested in writing by West Power Group.
- (k) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (l) **Intellectual Property** means patents, copyright, moral rights, performance rights (as described in Part XI of the *Copyright Act 1968* (Cth)), rights in circuit layouts, plan breeder's rights, registered designs, trade marks and the right to have confidential information kept confidential, and any application or right to apply for registration of any of those rights.
- (m) **Order** means a purchase order for Goods and/or Services made by the Customer.
- (n) **Parties** means the Customer and West Power Group.
- (o) **PPSA** means the *Personal Property Securities Act 2009* (Cth) ('**PPSA**').
- (p) **Quote** means the written estimate of the costs of supplying the Goods and/or performing the Service, as prepared by West Power Group and provided to the Consumer.
- (q) **Site** means the place for delivery of Goods, as specified by the Consumer to West Power Group.

#### 4. Precedence

These Terms take precedence over and override the Customer's terms and all other terms stipulated by the Customer in relation to the supply of Goods or Services by West Power Group. The Customer is deemed to have accepted these Terms by placement of a purchase order or by otherwise accepting the provision of Goods and Services by West Power Group.

#### 5. Quotes

All Quotes for prices and availability of Goods and Services provided by West Power Group are valid for a period of 30 days from the date on the Quote unless specified otherwise.

#### 6. Quote Exclusions

Unless expressly stated in the Quote, all Quotes for Goods and Services exclude:

- (a) project specific engineering calculations;
- (b) any special Site allowances or agreements;
- (c) any non-standard or non-warranty finishes for Goods;
- (d) cyclonic treatment for Goods;
- (e) delivery costs for Goods outside of the Perth metropolitan area; and
- (f) any additional items, or Goods outside of the scope of supply.

#### 7. Costs and Expenses

The Customer will be responsible for the full amount of all costs, expenses and liabilities of West Power Group which result where any of the exclusions in clause 6 are subsequently required by the Customer or considered to be necessary for the purpose of provision of the Goods and Services.

#### 8. Prices

Prices for Goods are West Power Group's net retail price for Goods at the date of a quotation or purchase order. Prices are subject to changes for any significant fluctuation in the input prices and exchange rates relating to the Goods as notified from time to time by West Power Group. Prices are only valid for acceptance of a full quotation and will need to be re-quoted for any partial acceptance. Prices of custom-made Goods are subject to reasonable margins being allowed for over or under making.

#### 9. Mistake

West Power Group reserves the right to correct mistakes in prices and quantities quoted in any quotation by giving written notice to the Customer at any time prior to the delivery of Goods. The Customer is deemed to accept the terms of the correction unless it gives two days written notice declining the corrected quotation.

#### 10. Orders

All Customer orders will be subject to these Terms notwithstanding the terms of any Quote. West Power Group internal records will be conclusive evidence of all Customer orders (including measurements, quality, identity and quantity). The Customer represents that it is solvent at the time of each order. The Customer will inform West Power Group of any facts or circumstances which might affect the decision of West Power Group to extend credit to the Customer for any order.

#### 11. Variations

Variations of any order must be agreed in writing with West Power Group. The Customer will be liable for West Power Group's reasonable costs and expenses in relation to any variation or cancellation of an order

#### 12. Payment

All supplies of Goods and Services to Customers are on a cash sale basis unless credit terms have been agreed to in writing, and payment will be on the following terms:

- (a) All quoted prices do not include GST. GST shall be paid by the Customer on all invoices as an additional amount.

- (b) All accounts are to be settled in full within 30 days from the end of the month of the invoice unless otherwise specified by West Power Group.
- (c) Upon a default in payment, all monies due to West Power Group shall immediately become due and payable and shall be paid by the Customer within **seven (7) days** of the date of demand.
- (d) Interest will be calculated on the basis of the Commonwealth Bank of Australia Business Indicator Rate as published from time to time plus 2%. Interest will accrue daily from the payment due date until the outstanding amount is paid in full.
- (e) Any expenses, costs or disbursements incurred by West Power Group in recovering any outstanding monies including debt collection agency fees and solicitor's costs shall be paid by the Customer on an indemnity basis or a solicitor-client basis, whichever is higher.
- (f) West Power Group may at any time require (at its sole discretion) additional security from the Customer as considered reasonably necessary and can withhold supply of Goods and Services until acceptable security has been granted by the Customer.
- (g) Notwithstanding anything in these Terms the contrary, if the Customer terminates the Contract for any reason, West Power Group is entitled to **retain the Deposit** in satisfaction of West Power Group's costs and expenses incurred in connection with the Contract. In that event, West Power Group has no obligation whatsoever to deliver the Goods to the Customer and West Power Group may sell, retain or dispose of the Goods in its sole discretion.

### 13. Credit Accounts

In the case of trading on credit approved by West Power Group, the Customer acknowledges and agrees that:

- (a) a credit application must be provided and approved in writing by West Power Group; and
- (b) if the Customer fails to any credit application, West Power Group may immediately suspend any credit trading with the Customer.

### 14. Description of Goods and Services

All Goods and/or Services to be supplied by West Power Group to the Customer are as described on the Quote accepted by the Customer. The description on the Quote as so agreed prevails over all other descriptions of the Goods and/or Services including any specification or enquiry by the Customer.

### 15. Title and Risk

Risk in relation to Goods passes to the Customer at the point of delivery at the Site. Title to purchased Goods does not pass to the Customer until full payment for the purchased Goods has cleared in the account of West Power Group. West Power Group retains title to such purchased Goods and to any proceeds from disposal of such purchased Goods (to the extent traceable) for as long as there is any amount outstanding in relation to such purchased Goods.

Goods in the Customer's possession must be clearly identifiable as the property of West Power Group. Payment received for Goods on-sold by the Customer must be held on trust for West Power Group in a separate bank account and must be paid to West Power Group on demand.

### 16. Performance

Any performance figures given by West Power Group are estimates only. West Power Group is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

### 17. Delivery

In respect of delivery of Goods by West Power Group to the Customer:

- (a) a delivery date provided by West Power Group to the Customer is an estimation and West Power Group accepts no liability or responsibility in respect of any late or non-delivery, mechanical

breakdown or any other circumstances beyond West Power Group's control that may affect delivery;

- (b) if the Customer does not attend the delivery at the Site, the delivery note shall be forwarded to the Customer's address, which will be conclusive proof of delivery of the Goods in clean and good working order;
- (c) West Power Group reserves the right to charge reasonable delivery costs for each delivery;
- (d) The Customer agrees to pay all holding costs and handling costs for Goods that have not been collected within a reasonable period of notification by West Power Group.
- (e) The delivery times made known to the Customer are estimates only and West Power Group is not liable for late delivery or non-delivery.
- (f) West Power Group will not be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery or late installation of the Goods.
- (g) West Power Group may at its option deliver the Goods to the Customer in any number of instalments unless there is an endorsement overleaf to the effect that the Customer will not take delivery by instalments.
- (h) If West Power Group delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
  - (i) this does not constitute a repudiation of the contract of sale formed by these Terms; and
  - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

### 18. Loss or Damage in Transit

- (a) West Power Group is not responsible to the Customer or any person claiming through the Customer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not West Power Group is legally responsible for the actions of that person).
- (b) West Power Group must provide the Customer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Customer:
  - (i) has notified West Power Group and the carrier in writing immediately after loss or damage is discovered by the Customer on receipt of Goods; and
  - (ii) serves a claim for compensation on the carrier within 3 days of the date of receipt of the Goods.

### 19. Site Access

The Customer gives its unconditional consent for West Power Group to enter the Customer's premises or the Site at any time (or any other place where the Goods is located) for the purpose of installing, and where necessary, examining and/or repossessing the Goods. The Customer agrees to do all things necessary to ensure West Power Group has access to its premises and any Site pursuant to this clause.

### 20. Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Customer's expense, even if that cost has been omitted from the Quote. The Customer will return all pallets and any reusable packaging provided with the Goods and indemnifies West Power Group for the full replacement cost for materials not promptly returned to West Power Group.

### 21. Customer Warranty

The Customer acknowledges, agrees, represents and warrants that:

- (a) as the use of the Goods is outside the control of West Power Group, the Customer is satisfied that the Goods and/or Services when supplied have the condition, characteristics, quality and attributes that will make them suitable for any ordinary or disclosed special purpose required for them; and

- (b) the Customer has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the Goods are without defect and suitable or fit for any ordinary or disclosed purpose; and
- (c) the Customer has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or Service provided or given by West Power Group, other than those expressly contained in the Contract.

**22. West Power Group Warranty**

- (a) Subject to West Power Group commissioning the Goods, West Power Group warrants that in respect of the Goods it has supplied and installed for the Customer under these Terms, the Goods and/or Services are free from any defect due solely to faulty installation of the Goods for the duration of:
  - (i) 12 months from the Commission Date; or
  - (ii) 2,000 hours; or
  - (iii) 18 months from Actual Delivery,
 whichever is the earlier.
- (b) The Customer agrees and acknowledges that the warranty in clause 22(a) is subject to, and conditional upon, West Power Group commissioning the Goods. West Power Group is not liable in respect of work performed by any person unless those costs were expressly authorized by West Power Group in writing.
- (c) West Power Group's liability is limited to making good any defects. This must be done by repairing the defects or, at West Power Group's option, by replacement, within a period not exceeding 12 calendar months after the Goods have been dispatched. This applies so long as:
  - (i) the defects have arisen solely from faulty materials or workmanship;
  - (ii) the Goods have not received maltreatment, inattention or interference;
  - (iii) accessories of any kind used by the Customer are manufactured by or approved by West Power Group;
  - (iv) the seals of any kind on the Goods remain unbroken; and
  - (v) the defective parts are promptly returned free of cost to West Power Group.
- (d) If the Goods are not manufactured by West Power Group, the guarantee of the manufacturer of those Goods is accepted by the Customer and is the only guarantee given to the Customer for the Goods, unless otherwise stated in these Terms.
- (e) West Power Group agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to West Power Group under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

**23. Request for Service History**

The Customer must, if requested by West Power Group, provide full operational and service records for the Goods (including any parts associated with the Goods).

**24. Customer Guarantee**

The Customer acknowledges and agrees that:

- (a) West Power Group is not liable for, and the Customer releases West Power Group from, any claims in respect of faulty or defective design of any Goods supplied;
- (b) West Power Group's liability under clauses 22(a) is limited strictly to the replacement of defective parts in accordance with clause 22(c);
- (c) except as provided in these Terms, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the

- Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded; and
- (d) West Power Group is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of West Power Group's negligence or in any way.

**25. West Power Liability Limitations**

- (a) The guarantee in clause 22(a) does not apply in respect of:
  - (i) defects in any Parts not manufactured by West Power Group;
  - (ii) a failure by the Customer to ensure the Goods comply with any specification or requirement by West Power Group; and
  - (iii) replacement of consumables such as fittings, washers, filters, hoses, and other items reasonably expected to be replaced during the normal life of the Goods;
 or if:
  - (iv) the Customer fails to maintain the Goods in accordance with any of West Power Group's reasonable directions; or
  - (v) the Goods are serviced, altered, added to or repaired by any person other than West Power Group, or its officers, employees, consultants and agents.
- (b) West Power Group's liability for a breach of a condition or warranty implied by Part 3-2 Division 1 of the *Australian Consumer Law ('ACL')* is limited:
  - in the case of Goods, any one or more of:
    - (v) the replacement of the Goods or the supply of equivalent goods;
    - (vi) the repair of the Goods;
    - (vii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
    - (viii) payment of the cost of having the Goods repaired, and
  - in the case of Services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

**26. Liability Exclusion**

- (a) West Power Group excludes all liability to the Customer in relation to the Goods and Services, except to the extent stated in these Terms.
- (b) West Power Group will not be liable for any failure or defect with any Goods that arises from improper operation and maintenance of Goods by the Customer, including where the Customer has not adequately maintained or serviced the Goods in accordance with the original manufacturer's specifications, and to West Power Group's reasonable satisfaction.
- (c) West Power Group is not liable for any consequential loss or damages, including (but not limited to) loss of profit, business revenue, goodwill, anticipated savings or damage to property.

**27. Indemnification of West Power Group by Manufacturer**

West Power Group's liability under section 274 of the ACL is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the Goods;
  - (b) the cost of obtaining equivalent goods; or
  - (c) the cost of having the Goods repaired,
- whichever is the lowest amount.

**28. Customer Indemnity to West Power Group**

The Customer shall at all times indemnify and keep indemnified West Power Group and its officers, employees, consultants and agents against all claims, demands, actions, causes of action, suits, proceedings, judgements, orders, decrees, damages, costs, losses and expenses or any nature whatsoever which may be made against or incurred or payable by West Power Group under statute, common law,



equity, or otherwise, in respect of negligence, personal injury, death, illness, cost or damage arising out of any breach of these Terms by the Customer.

#### **29. Claims**

Any claim for non-delivery, shortage in supply or damage occurring during the course of delivery or any claim for rejects by a Customer must be in writing and given to the manager of West Power Group within 48 hours of delivery.

#### **30. Return of Goods**

- (a) Except as indicated otherwise in these Terms, West Power Group is not under any duty to accept Goods returned by the Customer.
- (b) If West Power Group agrees to accept returned Goods from the Customer under this clause, the Customer must return the Goods to West Power Group at West Power Group's place of business specified in these Terms or otherwise stipulated by West Power Group.
- (c) The Customer may not return any custom-made or specially produced or ordered Goods. All returns of unused Goods are subject to approval by West Power Group at its absolute discretion upon receiving a written request from the Customer. All credits for Goods that have been approved for return will be less any administration fee and less any freight charges incurred by West Power Group.

#### **31. Variations in Goods**

The Customer acknowledges that some Goods are not manufactured by West Power Group and accepts:

- (a) that variations in colour, texture and inherent quality may occur within reasonable tolerances; and
- (b) that Goods are susceptible to changes in quality structural strength, appearance, finish and/or colour due to inappropriate use, maintenance and servicing and due to exposure to the elements, chemicals and foreign materials.

#### **32. Cancellation**

No order may be cancelled by the Customer except with the written consent of West Power Group. If there is a cancellation of the order by the Customer, West Power Group has the right to claim indemnity against all losses suffered as a consequence of that cancellation.

#### **33. Storage**

West Power Group reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Customer within 7 days of a request by West Power Group for such instructions. The parties agree that West Power group may charge for storage from the first day after West Power Group requests the Customer provide delivery instructions.

#### **34. Information Disclaimer**

The Customer is responsible for assessing the suitability of the Goods for their proposed use and relies solely on its own judgment and expertise and not in reliance on any documentation, information, statements, advice or representations provided by West Power Group.

#### **35. Repossession and other Rights in Relation to Goods**

West Power Group reserves the following rights in relation to the Goods until all accounts owed by the Customer to West Power Group are paid in full:

- (a) ownership of the Goods;
- (b) to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (c) subject to, and in accordance with, the PPSA, to keep or resell any Goods repossessed pursuant to clause 35(b).

If the Goods are resold, or products manufactured using the Goods are sold, by the Customer, the Customer will hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account. This will be held the beneficial property of West Power Group, and the Customer will pay such amount to West Power Group upon request.

Such rights shall be without prejudice to West Power Group's right to claim damages from the Customer for breach of contract or any other rights that accrue at law, and the risk of the Goods shall pass to the Customer upon delivery.

#### **36. Default**

Upon material default or repudiation of a contract for supply of Goods or Services by a Customer, West Power Group may by notice retain all moneys paid, call-up all monies due and owing, cease delivery of any Goods or Services, and take possession of any Goods unpaid for without prejudice to any other rights and without liability to the Customer. An insolvency event will constitute a material default for this purpose.

#### **37. Termination**

West Power Group may terminate the Contract by notice to the Customer at any time after a Default occurs.

#### **38. Consequences of Expiration or Termination**

- (a) The expiration or termination of the Contract does not affect any rights, liabilities or obligations of the Customer or West Power Group as a result of anything occurring before the expiration or termination.
- (b) On the expiration or termination of the Contract, the Customer must as soon as practicable:
  - (i) deliver to West Power Group all records as required by them;
  - (ii) complete or cease to fulfil any outstanding Order as the Customer directs;
  - (iii) allow the Customer to use at the Customer's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor if required in connection with the Contract, but the Customer must pay the Contractor for any materials or consumables used by the Customer as a result of using that property; and
  - (iv) in every other respect cooperate with the Customer as reasonably required by the Customer in order to minimise any loss, damage or inconvenience to the Customer resulting from the expiration or termination of the Contract.

#### **39. Confidentiality**

The Customer must keep confidential and not disclose, and ensure that its employees, agents and subcontractors keep confidential and not disclose, the Price or any information that would otherwise be confidential between the parties, except that the Customer may disclose information to the extent reasonably required to comply with the mandatory requirements of an applicable Law.

#### **40. No Exclusion**

These Terms do not exclude any provisions required by Law to be included and any inconsistent provisions shall be severed from these Terms without affecting the enforceability of the remaining provisions.

#### **41. Licenses and Approvals**

The Customer is responsible for obtaining at its own cost, any authorisations, permit, licence, consent, grant, certificate, sealing or other approval required to be obtained a Governmental Agency to enable the Customer to lawfully use the Goods.

#### **42. Notice**

Any notice, consent, or approval requests all direction to be given by one party to the other party pursuant to these terms may be given by personally delivering the same, by facsimile, by email or by registered mail addressed to the party as specified in this clause, or at such other

addresses as may be notified in writing to the other party from time to time. Any notice, consent or approval or directions so sent shall be deemed to have been duly given, served and received:

- (a) If personally delivered, upon receipt by the addressee;
- (b) If sent by pre-paid post, three (3) business days after that of posting; and
- (c) If sent by facsimile or email, upon receipt by the sender of a successful transmission report provided that if facsimile is sent after 4pm on a business day or is sent on a day which is not a business day, the notice shall be deemed to have been received on the following business day.
- (d) Customer Address is the Customer's principal place of business and/or the Site and/or the Customer's registered office.
- (e) West Power Group Address: 31-33 Mandarin Road, MADDINGTON WA 6109.

#### 43. Trust

In the case of a Customer that is a trust, the trustee of the Customer enters this Agreement in its personal capacity as well as in its capacity as Trustee. The Trustee warrants that the trust is lawfully operating and that the assets of the trust shall be available to meet payment of the account.

#### 44. Charge

The Customer grants West Power Group the following security interests as collateral for its performance of its obligations:

- (a) The Customer hereby charges all presently owned and future acquired real property of the Customer and the Customer agrees immediately upon being required by West Power Group to enter into a mortgage to be prepared by West Power Group's solicitors on the terms and conditions as West Power Group's solicitor shall think fit to secure any sum due hereunder and the Customer further agrees and permits and authorises West Power Group to register an absolute caveat over any real property now owned by the Customer or in the future acquired by the Customer to secure any sum due hereunder at any time from the Customer to West Power Group during the continuance of the Contract.
- (b) The Customer hereby charges all present and after-acquired personal property as security which includes all proceeds of the sale or divestment of any present or after-acquired Goods or personal property and the security interest granted pursuant to this clause extends to all rights in relation to accounts of the Customer's debtors; and
- (c) The Customer will do all such things and provide all such documents as reasonably directed by West Power Group to enable West Power Group to obtain the full benefit of the securities granted in these provisions.

#### 45. PPSA

The Contract is a security agreement. The Customer acknowledges and agrees that all proceeds from the sale of Goods by West Power Group to a third party is a security interest.

- (a) the Customer consents to West Power Group perfecting any security interest which arises by operation of the PPSA and agrees to do anything reasonably required by West Power Group to enable it do so. West Power Group contracts out of each provision of the PPSA that it is permitted to contract out of under s115(1) of the PPSA.
- (b) the Customer waives its rights to receive all notices under the PPSA that are permitted to be waived under s157(3) of the PPSA. At the request of West Power Group, the Customer will procure and register a security interest in relation to Goods sold to a Customer's client where such Goods are still subject to a retention of title by West Power Group. To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by West Power Group of a security interest in the Goods, the following provisions of the PPSA are excluded:

- (i) to the extent permitted by section 115(1) of the PPSA, sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
- (ii) to the extent permitted by section 115(7) of the PPSA, sections 129(2) and (3), 132, 133(1)(b), 134(2), 135, 136(3), (4) and (5) and 137.

#### 46. Director Guarantee

Where the Customer is a corporation, each of the directors jointly and severally guarantees the payment by the Customer of all outstanding amounts in relation to Goods sold by West Power Group.

#### 47. Miscellaneous

##### (a) Force Majeure

West Power Group is not liable for any delay or failure to perform which arises from inclement weather, abnormal conditions, unavailability of materials, strikes, lockouts, acts of God and any other factor that is beyond the control of West Power Group for so long as such factors, events or circumstances persist.

##### (b) Entire Agreement

These Terms, together with the Quote, constitute the entire agreement between the parties with respect to the Goods and/or Services.

##### (c) Waiver

Any waiver of any provision of these Terms, or consent to any departure from a provision of the Contract by any of the parties shall only be effective in the specific instance and for the purpose for which it was given, even if the terms of a waiver are not so limited. No default or delay on the part of either party in exercising and rights, powers or privileges shall act as a waiver of them or of any other right nor shall a single or partial exercise or exercise of any other rights, power or privilege.

##### (d) No Set-off

The Customer may not set-off or counterclaim against West Power Group in relation to any amount due and payable to West Power Group and this clause may be pleaded as a bar to action against the Customer.

##### (e) Inconsistency

These Terms prevail over any other document or agreement between West Power group and the Customer, to the extent of the inconsistency.

##### (f) Enforceability

Any provision of, or the application of any provision of, these Terms which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any provision of, or the application of any provision of, these Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

##### (g) Jurisdiction

These Terms will be governed by, and construed in accordance with, the laws of the State of Western Australia. Each party submits to the exclusive jurisdiction of the Courts of Western Australia.

##### (h) Severance

The parties agree that the provisions of these Terms are reasonable in all the circumstances and that each provision is, and will be deemed, to be severable and independent. Further, if all or any part of any provision is judged invalid or unenforceable the removal of that provision or part will not affect the validity or enforceability of the remaining provisions.

##### (i) Amendment

These Terms can only be amended or replaced by another document executed by the parties.