



## Portfolio Terms and Conditions

THIS PORTFOLIO TERMS AND CONDITIONS ("AGREEMENT") IS BETWEEN AECO ENERGY AUSTRALIA PTY. LTD. ("AECO Energy") AND THE CUSTOMER.

### 1.0 Agreement

1.1 The Services shall be governed by the Agreement unless the parties enter into a separate agreement with the intention that it will govern the Services. Customer's signature on the Proposal, issuance of a purchase order pursuant to the Proposal, or payment of Fees, whichever is earlier, shall be deemed as Customer's acceptance of the Agreement. Any other terms or conditions not included in the Proposal and the Agreement are hereby rejected and shall not bind AECO Energy in any way.

### 2.0 Services

#### A. Portfolio Services

2.1 Subject to Clause 2.4 (Agency), AECO Energy shall manage the electricity requirements of the Customer pursuant to the Portfolio Plan and Mandate chosen by the Customer ("Services").

2.2 Customer agrees and acknowledges that:

- a) Time is of the essence. AECO Energy procures electricity in bulk by aggregating the requirements of all its Portfolio customers. As such, all acts of AECO Energy in procuring Electricity Contracts are executed in the best interest of all its Portfolio customers collectively. To remove any doubt, in case of conflict between the collective interests of the Portfolio customers and the solitary interest of the Customer in the performance of this Agreement, AECO Energy will execute the Services to ensure that the collective interests of all the Portfolio customers will prevail and such determination shall be in absolute discretion of AECO Energy.
- b) Services is conditional upon Customer's reasonable and timely cooperation and the accuracy and completeness of any information needed from Customer.
- c) AECO Energy retains absolute discretion on how, when and which Electricity Retailer to enter into Electricity Contracts on behalf of Customer.
- d) The Electricity Contracts entered into by AECO Energy on behalf of Customer shall be governed by the terms and conditions stated in the Electricity Contracts and no other.
- e) Customer must maintain good credit standing with the Electricity Retailers. Failure to maintain good credit standing shall be considered a breach of this Agreement.

2.3 Customer may be given access to AECO Energy MarketPro Platform on a view-only basis. Use and access to MarketPro Platform shall be subject to AECO Energy Platforms Terms of Use.

#### B. Agency

2.4 Customer shall appoint AECO Energy as agent ("Agent") to act on behalf of Customer under the authorities outlined in the Portfolio Proposal, such as but not limited to, Agency Agreement, Portfolio Mandate Agency Instructions, and/or this Agreement ("Agency").

2.5 As Agent, Customer authorises AECO Energy to do any or all of the following acts on its behalf if instructed under the Agency Agreement:

- a) procure or cause the procurement of auctions or tenders from Electricity Retailers for the supply of electricity in the nominated Site(s) based on the Customer Energy Information and Customer Data provided by Customer.
- b) sign or execute Electricity Contracts or any other agreements necessary for AECO Energy to perform and/or maintain the Services.
- c) provide notice of termination or cancellation to Electricity Retailers as needed.
- d) such other acts as may be instructed by Customer in writing from time to time.

2.6 AECO Energy shall strictly follow the instructions and use reasonable diligence, care, and skill in carrying out the instructions of Customer.

2.7 For the avoidance of doubt, any Electricity Contract entered into and/or executed by AECO Energy on behalf of Customer under the Agency is a separate and independent contract between Customer and Electricity Retailer. AECO Energy is not and will not be a party to such Electricity Contracts. Termination of this Agreement does not terminate any Electricity Contract executed on behalf of Customer in accordance with the Agency and/or this Agreement.

### 3.0 Energy Information

3.1 Customer consents to the using, disclosing, and sharing of information relating to energy activities, including meter details, bills and invoices, electricity account information, electricity data, meter data, and energy usage details ("Customer Energy Information") between and among AECO Energy, its Affiliates, and/or Electricity Retailers for purposes of providing the Services.

3.2 Customer shall ensure that the authority given to AECO Energy to retrieve from Electricity Retailers and Electricity Retailer's obligation to release to AECO Energy the Customer Energy Information shall remain valid and effective during the Term.

3.3 Customer consents and grants to AECO Energy an unrestricted, perpetual, irrevocable, transferable, sub-licensable, worldwide, and royalty-free licence to use and retain Customer Energy Information for the use and access to and/or provision and delivery of the Services, disclosure to third parties or for any other purpose.

3.4 AECO Energy may create anonymised statistical data from Customer Energy Information and usage of the Services, including aggregation. Once anonymised, AECO Energy may use it for whatever purpose, such as to provide and improve on its Services and other AECO Energy Services, develop new services or product offerings, identify business trends, and for any other uses.

### 4.0 Fees

4.1 Customer shall pay AECO Energy the Fees set out in the Proposal and/or Invoice ("Fees").

4.2 Customer shall either:



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a) pay all invoiced amount without any counter claims, set offs or deductions within the time period stated in the Proposal and/or Invoice, or if not stated in the Proposal, within thirty (30) days from the Invoice date. Customer shall pay interest on all invoiced amount which remain unpaid after their due date at the penalty interest rate fixed for the time being under the *Penalty Interest Rates Act 1983*, which accrues on a daily basis until full payment is made;

1.5% (or the highest rate permitted under law)

b) authorise and instruct the nominated Electricity Retailer to collect payments of the Fees on behalf AECO Energy as part of the Customer's normal electricity bill and forward those payments to AECO Energy. Payment terms of this type of payment shall be subject to the payment terms of the nominated Electricity Retailer's standard terms and conditions.

4.3 Unless expressly stated otherwise, Fees payable to AECO Energy are exclusive of goods and services, value-added or other consumption tax ("GST"). In addition, Customer must pay the applicable GST for the Fees under the relevant Invoice.

4.4 On each anniversary of Agreement, any subsequent Fees may be varied by an amount due to Inflation.

4.5 At least thirty (30) days prior to the Expiration Date of the Agreement, you will be notified that the Agreement is about to terminate. Should you choose to renew this Agreement, you have to notify AECO Energy in writing of your intention to renew. If your notional electricity cost which is used to calculate this service price varies, then you will be notified as part of the renewal process of any price change in relation to the Service Costs prior to renewal.

## 5.0 Intellectual Property

5.1 AECO Energy, its Affiliates and licensors retain ownership over all intellectual property, materials, data, information, creations, facilities and works used or made available in connection with the performance, provision, and delivery of the Service including other rights in all copyrighted works, trademarks, designs, inventions or creations (collectively "AECO Energy IP").

5.2 Customer shall not copy, distribute, modify, make derivative works of or use any AECO Energy IP or other intellectual property rights in any way not expressly permitted by AECO Energy.

5.3 Customer owns all rights, title to, and interest in its intellectual property rights and its Customer Data. Customer grants to AECO Energy an unrestricted, perpetual, irrevocable, transferable, sub-licensable, worldwide and royalty-free license to use and retain any and all data, content, information and/or material provided or made available to AECO Energy for purposes of providing Services to Customer and for any other purpose.

5.4 Customer grants to AECO Energy and its Affiliates the right to use Customer's trade names, logos, and symbols ("Customer Marks") in its public promotional materials and communication for the purpose of identifying Customer as AECO Energy's Customer. The promotional materials and communications may be created, displayed, and reproduced without Customer's review and approval, provided that the use of the Customer Marks is in compliance with this section and/or any usage guidelines provided by Customer to AECO Energy or any applicable laws.

## 6.0 Confidentiality

6.1 The Receiving Party will keep confidential and will not use or disclose any Confidential Information without the prior written consent of the Disclosing Party. The Receiving Party will protect the Confidential Information of the Disclosing Party by using at least the same degree of care (but no less than reasonable degree of care) as the Receiving Party uses to protect its own Confidential Information to prevent unauthorised use, dissemination, disclosure or publication. This notwithstanding, the Receiving Party may disclose the Confidential Information to its Affiliates, employees, consultants, or advisors on a need-to-know basis and provided that such person is bound by substantially the same confidentiality obligations as stated herein.

6.2 Each party's respective obligations of confidentiality shall not apply to the disclosure of information to competent legal or regulatory authorities which is:

a) mandatory under the applicable law;

b) as far as possible, disclosed as aforesaid only after the other party to whom the obligation of confidentiality is owed, has been notified without any inexcusable delay and given the opportunity to clarify and advocate for a limitation or restriction of the information to be disclosed; and

c) limited only to information that is strictly required to be disclosed as aforesaid under the applicable law and if applicable, after the fulfilment of and considering the outcome of Clause 6.2(b) above.

6.3 The obligations of confidentiality shall commence immediately upon receipt of the Confidential Information. At the request of AECO Energy or after the stated purpose of use is achieved, the recipient of the Confidential Information agrees to destroy (unless otherwise directed by AECO Energy) all Confidential Information, and any written and other tangible materials which contain any Confidential Information received from AECO Energy, except that Customer may retain reasonable copies of the Confidential Information for the purpose of complying with requirements by law or any applicable governmental or regulatory authority or its corporate governance, provided that the provisions of this Agreement shall continue to apply to any such records, files, documents or materials retained by the Customer.

## 7.0 Warranties and Disclaimers

7.1 Customer recognises the uncertainty of the future price of electricity and acknowledges that AECO Energy cannot provide reliable forecasts, guarantees or warranties over any future price of electricity.

7.2 Customer acknowledges that AECO Energy cannot warrant or guarantee that the prices will be the lowest available at the time when prices are presented to Customer or when the Electricity Contract is executed.

7.3 Customer represents and warrants that at the time of the execution of Service Agreement and/or other documents required for the implementation of Portfolio Services, it has at least twenty (20) employees. Should the Customer breach this representation or warranty, AECO Energy has the right to terminate the Service Agreement with immediate effect. Thereafter, Customer shall be liable to AECO Energy for the payment of termination fee as specified in Clause 10.0 Termination.

## 8.0 Limitation of Liability

8.1 **To the full extent permitted by law, we will not be liable in any circumstances, however arising, to you or any person claiming through you in contract, tort, or otherwise (including negligence) for:**





**a) Any economic loss or damage & in particular (without limitation), any loss of revenue, profits, data, actual or potential business opportunities, contracts or anticipated savings of profits; or**

**b) Any indirect or consequential loss.**

**8.2 We will not be liable for any consequential, direct or special loss resulting from any fluctuation in energy prices, government regulated price, or any other market price into the future that may result from you being advised and contracted on rate higher than that may be available into the future and that is unknown or uncertain at the time.**

8.3 To the fullest extent permitted by applicable law, in no event shall the total liability of AECO Energy, from all claims or causes of action and under all theories of liability arising out of or relating to this Agreement, exceed the amount stated in the Proposal or Purchase Order on which the claim is based. This limitation of liability will not apply to claims for death or personal injury caused by negligence, breach of confidentiality or infringement of intellectual property rights.

## 9.0 Indemnity

9.1 AECO Energy will defend or settle any action brought against Customer to the extent that it is based upon a third-party claim that AECO Energy IP infringes or misappropriates such third party's patent, copyright, trademark, or trade secret, and will pay any costs and damages made in settlement or awarded against Customer in final judgment resulting from any such claim, provided that Customer: (i) gives AECO Energy prompt notice of any such claim; (ii) gives AECO Energy sole control of the defence and settlement of such claim; and (iii) gives AECO Energy, at AECO Energy's expense, all information and assistance reasonably required for the defence and settlement of such claim. AECO Energy will not be bound by any settlement or compromise that Customer enters into without AECO Energy's prior written consent.

9.2 The foregoing provision sets forth the sole and exclusive liability of AECO Energy and the sole and exclusive remedy of Customer for any claims of infringement or misappropriation of intellectual property rights of any kind.

9.3 Customer will defend, indemnify and hold AECO Energy harmless from and against all liabilities, damages, costs, fees and expenses, including reasonable attorney's fees arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) Customer's gross negligence or intentional misconduct; (ii) a breach of Clause 5.0 (Intellectual Property); or (iii) any Electricity Contracts between Customer and Electricity Retailers.

## 10.0 Termination

10.1 Customer may terminate the Agreement without cause by giving a ninety (90) day written notice to AECO Energy. In such a case, Customer shall pay AECO Energy, on or before the effectivity date of the termination, a termination fee in an amount equal to (a) the outstanding and remaining fees until the end of the term of any electricity or gas contracts arranged as part of the service of AECO Energy, or (b) the fifty percent (50%) of the total fees remainder of the Portfolio Contract payable to AECO Energy or (c) the twelve (12) months of fees payable to AECO Energy, whichever amount is greater.

10.2 Either party may immediately terminate the Agreement by way of written notice to the other party if the other party (a) becomes insolvent or bankrupt, files for reorganization under the bankruptcy laws, or makes an assignment for the benefit of its creditors; or (b) fails to remedy a material breach within

fourteen (14) days from the date of written notification by the first party.

10.3 Upon termination of the Agreement for any reason, Customer shall be liable to reimburse AECO Energy for all costs (including termination fee), damages and/or claims in connection with or arising out of a termination of the Agreement. Any Fees paid to AECO Energy shall be non-refundable.

## 11.0 Audit

Customer must, for a period of seven (7) years or longer if required by law, maintain all records for the Services and compliance with Clause 6.0 (Confidential Information). At request of AECO Energy, Customer must, at no additional cost to AECO Energy, provide to AECO Energy and its internal and external auditors, inspectors, regulators and other agents or representatives, access at reasonable times and on reasonable notice to Customer's premises, to validate such records.

## 12.0 Assignment

Neither party may assign or transfer this Agreement or any obligation herein without the prior written consent of the other party, except that, upon written notice, AECO Energy may assign or transfer this Agreement or any obligation herein to its Affiliate, or an entity acquiring all or substantially all assets of AECO Energy, whether by acquisition of assets or shares, or by merger or consolidation without consent of the Customer. Any attempt to assign or transfer this Agreement shall be null and of no effect. For purposes of this Agreement, a change of control will be deemed to be an assignment. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

## 13.0 Subcontractors

AECO Energy may use subcontractors to perform the Services.

## 14.0 Changes

No changes, amendments or modifications to the Agreement, Proposal, or any other documentation are binding unless made in writing and signed by the duly authorized representatives of each party. Employees and representatives of AECO Energy are not authorized to enter into oral collateral agreements or to give verbal guarantees beyond the contents of a written contract.

## 15.0 Entire Agreement

15.1 The Agreement contains the entire understanding of the parties, to the exclusion of any and all prior or collateral agreement or understanding, relating to the Services, whether oral or written. Customer acknowledges that it did not enter into the Agreement on reliance upon any statement made by AECO Energy, other than as expressly contained in the Agreement.

15.2 If any part of the Agreement is found to be invalid or of no force or effect, the Agreement shall be construed as though such part had not been inserted and the remainder of the Agreement shall retain its full force and effect.

15.3 To the extent that any other term or condition specific to the Proposal conflicts with any other term or condition in the Agreement, the term or condition specific to the Proposal will apply.

15.4 In the Agreement, unless the context otherwise requires or permits:

a) Where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase will have the corresponding meaning.



b) References to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions.

c) References to months and years means calendar months and years.

d) The use of headings is only for convenience and does not affect interpretation and any headings, underlining or marginal notes are only included for ease of reference.

e) The terms "included", "including" and similar expressions when introducing a list of items do not exclude a reference to other items of the same class or genus.

## 16.0 Notices

16.1 Any notice, demand, consent or other communication required to be given by either party must be in writing and will be deemed to have been duly given: (a) when delivered by hand or by fax; (b) seven (7) working days after being sent by registered or certified mail; (c) two (2) business days after deposit with a recognized overnight delivery or express courier services; or (d) one (1) business day after being sent by email and no failure of delivery notice was received by sender.

16.2 Notices to AEEO Energy shall be sent to legal@aeocoenergy.au.

## 17.0 Force Majeure

Except for payment obligations, neither party shall be liable to the other party for any delay or failure to perform due to any Force Majeure event as defined in the Agreement. In such event, both parties will resume performance promptly after the cause of such delay or failure has been removed.

## 18.0 Dispute

18.1 If a dispute arises out of this Agreement, the parties shall seek to resolve it on an amicable basis and shall consider the appointment of a mediator to assist in that resolution. No party shall commence legal or arbitration proceedings unless thirty (30) days' notice has been given to the other party.

18.2 Any dispute, controversy or claim arising out of or relating to this Agreement (including non-contractual disputes or claims) shall be finally settled under the rules of the applicable Australian Centre for International Commercial Arbitration. The place of arbitration shall be in Australia and the language of the arbitration shall be English.

## 19.0 Governing Law & Compliance

The Agreement shall be governed & construed in accordance with the laws of the State of Victoria. Each party shall ensure compliance with the laws applicable to this Agreement, including but not limited to laws on export control, anti-corruption and/or anti-bribery.

## 20.0 Definitions

**"Affiliates"** means any entity that controls, is controlled by, or is under common control with Customer or AEEO Energy, as applicable, where "control" means having the power, directly or indirectly, to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities, by contract or otherwise. AEEO Energy is part of the AEEO Pacific Group of Companies.

**"Agency Agreement"** means the document which sets out the instructions of the Customer for procuring Electricity Contracts for a particular Site(s).

**"Bridging Electricity Contract"** means an Electricity Contract, the term of which spans between an existing and current Electricity Contract end date and Customer's selected Portfolio Services start date.

**"Confidential Information"** means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or can reasonably be understood as confidential given the nature of the information and circumstances of disclosure. Confidential information shall include, but not be limited to, Customer Data, AEEO Energy's Content and Services, the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, Customer details and information, and business processes disclosed by such party. However, Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**"Customer"** means the customer identified in the Proposal.

**"Customer Data"** means all data, information and/or content of the Customer disclosed to AEEO Energy for the provision of the Services.

**"Electricity Retailer"** means an electricity retailer licensed by the Australian Energy Regulator to retail electricity.

**"Electricity Contract"** means an agreement between Customer and Energy Retailers for the supply of electricity to the nominated Site(s).

**"Fees"** means the amount to be paid by Customer in the Proposal, Purchase Order or Invoice (as may be varied under the Agreement).

**"Force Majeure"** means any event which is beyond the control of or unforeseen by the parties or which, though foreseen, is inevitable, including fire, virus, epidemic, travel advisories as to health, security and/or terrorism, flood, lockout, transportation delay, war, acts of God, governmental rule or order, strikes or other labour issues.

**"Inflation"** means a percentage, which represents the increase in general prices in the Australian economy in the previous calendar year as calculated by the Australian Bureau of Statistics and published by them as the Consumer Price Index.

**"MarketPro"** is a digital platform created, owned, and managed by AEEO Pacific Group of Companies where subscribers can initiate an auction or tender, secure offers or bids in response thereto, and close Electricity Contracts from registered Electricity Retailers.

**"Services"** means any service(s) stated in the Proposal and/or Agency Agreement to be provided by AEEO Energy including, but not limited to, procuring aggregate tenders and bids from Electricity Retailers, select, manage and enter into Electricity Contracts for nominated Site(s), and any other actions for and on behalf of and in accordance with the instructions of the Customer.

**"Site"** means a metered electricity supply point charged as part of an Electricity Contract in relation to consumption of Customer.