

**Business Details**

<b>Business</b>			
Business Numbers	ABN 53 003 408 008	ACN	003 408 008
Business structure	Australian Private Company	Year of inception	05-11-1987
Last financial Year Turnover			
Average Monthly Turnover			
Net Profit/Loss			
CEC Registration Number			
Electrical License			
Number of employees	23		
Number of Offices			

<b>Names</b>	
Legal Entity Name	DYLDAM DEVELOPMENTS PTY. LIMITED
Main trading name	DYLDAM DEVELOPMENTS PTY LTD
Other trading names	

<b>Account Details</b>	
Credit Limit Requested	23

**Contact Details**

<b>Primary Contact</b>	
Full name	TEST
Position	TEST
Contact Number	12434
Contact Details	E TEST@TEST.COM F

<b>Accounts Payable Contact</b>	
Full name	TEST
Contact Number	12434
Contact Details	E TEST@TEST.COM F

**Director/Principal Details**

Name	SAM FAYAD DOB 1959-08-17 Drivers Licence 2134
Home Address	
Contact Details	P 123123 M 213123 E TEST@TEST.COM
Registered Address	LEVEL 1 72 MACQUARIE STREET PARRAMATTA, NSW, 2150, Australia
Billing Address	LEVEL 1 72 MACQUARIE STREET PARRAMATTA, NSW, 2150, Australia
Delivery Address	LEVEL 1 72 MACQUARIE STREET PARRAMATTA, NSW, 2150, Australia

**Trade References**

Trade Reference Full Name	TEST
Trade Reference Company Name	TEST
Trade Reference Phone	232
Trade Reference Email	suygu@fiuhe.com
Trade Reference Full Name	Efhjgw
Trade Reference Company Name	jhgbe
Trade Reference Phone	435
Trade Reference Email	dfhjb@kjdfhb.com
Trade Reference Full Name	Werfd
Trade Reference Company Name	dsfds
Trade Reference Phone	23234
Trade Reference Email	asdds@erjknf.com

**PARTICULARS**

<b>Agreement Date</b>	This date this Agreement is signed by Achievers Energy.
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**(A) AGREEMENT**

<b>1</b>	<b>Agreement</b>	The parties agree that any sale from Achievers Energy to the Customer shall be subject to the terms and conditions of this Agreement.
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**(B) CREDIT ACCOUNTS & DEFAULT CREDIT TERMS**

A Credit Account can only be authorized after completing a Credit Account Application.

<b>1</b>	<b>Credit Account</b>	Does the customer have a Credit Account?	
		What is the Credit Limit (Inclusive of GST)?	
		What Payment Terms does the Customer Have?	
<b>2</b>	<b>Default Credit Terms</b>	<p>Unless stated otherwise, these are the minimum terms that apply to any Credit Account or credit provided to the Customer (even if credit is provided inadvertently or by way of the customer receiving goods it has not paid for):</p> <ul style="list-style-type: none"> <li>• <b>Title.</b> Title is retained in accordance with the General Conditions;</li> <li>• <b>Security.</b> Security for payment is registrable in accordance the General Conditions;</li> <li>• <b>Payment.</b> Payment must be received within the Payment Terms</li> <li>• <b>Interest.</b> Interest applies at 1.5% per month accruing daily on any overdue payments.</li> </ul>	
<b>3</b>	<b>Guarantee</b>	Where so required by Achievers Energy the directors and/or owners of the Customer must provide a personal guarantee as to the obligations of the Customer to pay for Products obtained from the Company, which shall be set out in the Special Conditions.	
<b>4</b>	<b>Insurances Required</b>	The Customer is required to hold suitable commercial insurance from a reputable insurance provider to cover the full Order value of goods that it purchases on its Credit Account as a condition of its Credit Account, proof of which must be provided on demand.	

**(C) PRODUCTS & PRICING**

<b>1</b>	<b>Products</b>	<ul style="list-style-type: none"><li>• Solar modules;</li><li>• Inverters;</li><li>• Battery;</li><li>• Solar racking;</li><li>• Assorted componentry; and</li><li>• Other products and variations as notified to you in writing from time-to-time.</li></ul>
<b>2</b>	<b>Pricing</b>	Pricing shall be the most current pricing notified in writing to the Customer by Achievers Energy. Achievers Energy reserves the right to change pricing at any time and no pricing is confirmed until an Order is accepted by Achievers Energy.

**(D) ORDERS, DELIVERY, RETURNS & REBATES/BONUSES**

<b>1</b>	<b>Orders</b>	<ul style="list-style-type: none"><li>• All Orders must be made in writing and specify the:<ul style="list-style-type: none"><li>• Products required;</li><li>• Price of Products;</li><li>• GST payable;</li><li>• Delivery instructions; and</li><li>• Any other relevant timeframes &amp; dates.</li></ul></li></ul> <p>Achievers Energy reserves the right to reject Orders that do not contain all of the above information.</p> <ul style="list-style-type: none"><li>• Achievers Energy may from time-to-time change the way it requires the Customer to make Orders.</li></ul>
<b>2</b>	<b>Delivery</b>	<ul style="list-style-type: none"><li>• Where the Customer arranges for delivery of an Order, all risk passes to the Customer upon collection of the Order by the Customer or whoever they have nominated to collect the Order.</li><li>• Where Achievers Energy includes delivery or freight with the Order then risk on the Order shall pass to the Customer immediately upon collection of the Order from Achievers Energy.</li></ul>
<b>3</b>	<b>Returns</b>	In accordance with clause 10 of the General Conditions, any damaged Products in an Order must be notified in writing to Achievers Energy within 5 business days of delivery. The Customer should take photos of any damage and send

		<p>Through to their account manager at Achievers Energy. The Customer must freight the damaged Product back to Achievers Energy. Achievers Energy will at its discretion either:</p> <ul style="list-style-type: none"> <li>• Replace the damaged Products and re-freight at no cost</li> </ul>
4	<b>Warranties</b>	<p>Achievers Energy does not offer any warranty on the Products as this provided for by the manufacturer, and Achievers Energy shall not be responsible or liable to the Customer or its customers with respect to the enforcement of any warranty.</p>
5	<b>Rebates and Bonuses</b>	<ul style="list-style-type: none"> <li>• From time-to-time Achievers Energy may offer rebates and/or bonuses for volumes of purchases of Products from Achievers Energy on such terms &amp; conditions as it sees fit.</li> <li>• Unless stated otherwise, any rebates and/or bonuses shall be treated as a reduction in the balance owing on a current invoice and are not redeemable for cash or any other credit, nor are they transferrable or assignable in any way.</li> <li>• Any rebates and/or bonuses are only provided where the Customer is not in breach of this Agreement or any other agreement it has with Achievers Energy.</li> </ul>

**(E)PAYMENT**

1	<b>Invoicing</b>	<p><b>Upon confirmation of an Order, Achievers Energy shall raise a tax invoice for that Order which shall be payable with the Payment Terms or on the payment terms of the invoice.</b></p>
2	<b>Payment Terms</b>	<ul style="list-style-type: none"> <li>• If the Customer does not hold a Credit Account, the Customer must pay all invoices in full prior to dispatch of the Order. If the Customer does not make full payment prior to dispatch then that Order and the Customer are subject to the Default Credit Terms.</li> <li>• If the Customer holds a Credit Account then payment is as per the terms offered to the Customer.</li> </ul>
3	<b>GST</b>	<p>The Customer is responsible for all GST due on any tax invoice issued to the Customer by Achievers Energy.</p>

(F) COMPANY POLICIES

1	<b>Company Policies</b>	Achievers Energy may from time-to-time set policies to do with marketing, systems, standards, ordering, deliveries and freight which the Customer must reasonably comply with upon notice in writing.
2	<b>Default &amp; Branch</b>	Where the Customer is in default or breach under any agreement with Achievers Energy, the General Conditions shall apply and no rights of Achievers Energy shall be prejudiced as a result of any action or inaction of Achievers Energy.

(G) INTELLECTUAL PROPERTY

1	<b>Brand Owners IP</b>	<p>The Customer acknowledges and agrees that:</p> <ul style="list-style-type: none"><li>• The owner of Intellectual Property rights (IP) with respect to the Products (such as the manufacturer) may require that the Customer obtain their approval for any use of their IP and their brand;</li><li>• The Customer will abide by all directions of the IP owner with respect to usage of their brand; and</li><li>• The IP owner may prohibit or restrict the use of the brand by the Customer and that Achievers Energy cannot override the decision of the IP owner.</li></ul>
2	<b>Achievers Energy</b>	<ul style="list-style-type: none"><li>• The Customer may receive documentation, marketing material and other intellectual property during the relationship with Achievers Energy, any such Intellectual Property shall be given to the Customer on a revocable, non-exclusive license by Achievers Energy, without any derogation of its rights.</li><li>• AllIntellectualProperty,includinglogos, documents, spreadsheets, the wording of brochures, textual &amp; photographic information, contracts, websites and other information remains the property of Achievers Energy, and nothing should be copied or made to look as your own work without the express written permission of Achievers Energy.</li><li>• Unauthorized use of Intellectual Property will be treated seriously and the Customer agree to indemnify Achievers Energy for any losses caused or costs incurred as a result of unauthorized use of Intellectual Property.</li></ul>

**(H) CONFIDENTIAL INFORMATION**

<b>1</b>	<b>Confidential Information</b>	In accordance with the General Conditions the Customer agrees to keep confidential all information related to: <ul style="list-style-type: none"><li>• Pricing;</li><li>• Credit Accounts; and</li><li>• Intellectual Property.</li></ul>
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## GENERAL CONDITIONS

### NARRATIONS

- o Achievers Energy distributes Products to Customers to sell to End Users.
- o The Customer wishes to purchase Products from the Company.
- o Any purchase of Products by the Customer from the Company will be in accordance with this agreement.

### 1. INTERPRETATION

1.1. The following definitions apply in this document:

1.1.1. **ABN** means Australian Business Number.

1.1.2. **ACN** means Australian Company Number.

1.1.3. **Business Day** means a day (other than a Saturday, Sunday or public Holiday) on which banks are open for general banking business.

1.1.4. **Confidential information** means any written or verbal information, that is not excluded Information, that:

1.1.4.1. Is connected with the company and is obtained from the company or one of the company's representatives;

1.1.4.2. The company informs the customer that the company considers it confidential and proprietary; or

1.1.4.3. Is personal information within the meaning of the privacy Act 1988 (Cth).

1.1.5. **Corporations Act** means the Corporations Act 2001 (Cth).

1.1.6. **Effective Date** means the date on which this agreement is signed by each party.

1.1.7. **End Users** means retail customers who purchase the Products for installation and operation in a place of residence or business.

1.1.8. **Excluded Information** means information that the Customer can establish:

1.1.8.1. was in the public domain at the time it was given to the Customer;

1.1.8.2. became part of the public domain, without the Customer's involvement in any way, after being given to the Customer;

1.1.8.3. was in the customer's possession when it was given to the customer, without having been acquired (directly or indirectly) from the company; or

1.1.8.4. Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

1.1.9. **Force Majeure Event** means an act of war (whether declared or not) or terrorism, the mobilization of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government agency, a failure of a supplier,

Public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief.

- 1.1.10. **General Conditions** means the terms and conditions set out in the section of this agreement entitled "General Conditions".
- 1.1.11. **Insolvency Event** means an event that occurs when a party:
- 1.1.11.1. is in liquidation or provisional liquidation or under administration;
  - 1.1.11.2. has a controller as defined in the Corporations Act, or an analogous person appointed to it or to any of its property;
  - 1.1.11.3. is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
  - 1.1.11.4. is unable to pay its debts or is insolvent;
  - 1.1.11.5. dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason;
  - 1.1.11.6. takes any step that could result in the party becoming an insolvent under administration as defined in section 9 of the corporation Act;
  - 1.1.11.7. enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
  - 1.1.11.8. is affected by any analogous event.
- 1.1.12. **Intellectual Property** means all rights (present and future) conferred by common law, equity or statute (and all moral rights) connected with business names, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, business processes, patents, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.
- 1.1.13. **Orders** means orders for the Products by the Customer in accordance with this agreement.
- 1.1.14. **Particulars** means this agreement's details and variables set out in the section of this agreement entitled "Particulars".
- 1.1.15. **PPSA** means the Personal Property Securities Act (2009) (Cth).
- 1.1.16. **Products** means the equipment described in item B of the Particulars.
- 1.1.17. **Service** means the delivery and installation of the Products by the Customer at the residence or business location of the End User.
- 1.1.18. **Special Conditions** means the terms and conditions set out in the section of this agreement entitled "Special Conditions".
- 1.1.19. **Wholesale Activities** means activities that involve the Customer selling Product on a commercial scale to customers that are not End Users.
- 1.2. Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:



- 1.2.1. The singular includes the plural and the opposite also applies.
- 1.2.2. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- 1.2.3. A reference to a clause refers to clauses in this agreement.
- 1.2.4. A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- 1.2.5. Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
- 1.2.6. A reference to a party to this agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- 1.2.7. A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- 1.2.8. A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- 1.2.9. A reference to dollars or \$ is to an amount in Australian currency.

## **2. TERM**

- 2.1. This agreement will commence on the Effective Date and shall continue until terminated in accordance with this Agreement.

## **3. PRICING**

- 3.1. Achievers Energy shall issue price lists to the Customer from time-to-time for the Products.
- 3.2. Any prices for products are subject to change without notice, and products will be invoiced according to the price current on the day of the Customer's order.

## **4. ORDERS**

- 4.1. The customer will make orders using the in the manner set out in item D of the Particulars.
- 4.2. The process for Orders is subject to change without notice by the Company.
- 4.3. Rebates and bonuses will be applied in respect of the Products as set out in item D of the Particulars.

## **5. PAYMENT**

- 5.1. Achievers Energy will invoice the Customer for the Products provided before the date for payment in accordance with item E of the Particulars.
- 5.2. Payments made by the Customer must be made in accordance with the payment terms outlined in item E of the Particulars.
- 5.3. The customer will not supply Product to the Customer on payment terms unless:

5.3.1. The customer has completed a Achievers Energy Credit Application Agreement; or

5.3.2. An authorized Company representative arranges for an ad-hoc credit arrangement with the Customer.

5.4. The words in this clause that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning.

5.5. All prices referred to in this agreement are exclusive of GST.

5.6. All payments by the customer or other consideration for any supply by the Company to the Customer under or in connection with this document include any GST for which the Customer is liable on that supply, and the Company (and not the Customer) is responsible for payments of that GST.

5.7. Before providing products to the Customer, the Company must provide its ABN to the Customer.

## **6. DELIVERY OF PRODUCTS**

6.1. Risk of the goods passes to the customer upon payment for the goods, even if this is prior to collection either by a freight company or Customer's staff.

6.2. Freight of product from the Company to its destination is the Customer's Responsibility.

Achievers Energy will in no way be liable for damage to goods during transport. 6.3. The customer must maintain its own insurances for holding and transport risk.

6.4. Any freight charges incurred by the Customer will be added to the Customer's invoice and must be paid prior to dispatch, unless otherwise arranged on an ad-hoc basis by an authorized representative of the Company.

6.5. If the customer and company agree to any delivery period, that period is merely an estimate and the Company is not obligated to deliver in accordance with it.

6.6. The timing of delivery is not a term of this agreement, and no failure to deliver the Product in an agreed timeframe will give rise to any claim for compensation, or be a breach under this agreement.

## **7. TITLE OF THE GOODS**

7.1. If products are delivered to the Customer before the Customer pays the Company for those products in full:

7.1.1. Title of the products remains with the Company and does not pass to the Customer until the Company receives full payment, even if those goods have been installed, affixed, altered or mixed in anyway with any other equipment;

7.1.2. The customer will remain a Bailee in respect of the Products until full payment is received by the Company;

7.1.3. The customer grants a security interest to the Company over any monies paid to the Customer by End Users in respect of Products for which full payment has not been received by the Company;

7.1.4. The customer grants a security interest to the company over any end user debt in respect of the products for which full payment has not been received (**Debt**); and

## 8. PERSONAL PROPERTY SECURITIES

- 8.1. Defined terms in this clause have the same meaning as given to them in the PPSA.
- 8.2. The customer acknowledges that this Agreement constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (**PMSI**) in favour of the Company over the Products (**Goods**) supplied or to be supplied to the Customer (**Grantor**) pursuant to this Agreement.
- 8.3. The customer agrees that the security interest over Product established by clause 8, will be a registrable interest pursuant to the PPSA.
- 8.4. The goods supplied or to be supplied under this agreement fall within the PPSA classifications of Commercial property and "Other Goods" acquired by the Customer pursuant to these Terms. Achievers Energy and the Customer acknowledge that Achievers Energy, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer, as Grantor, under this Agreement on the PPSA Register as Collateral. The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Achievers Energy. Registration of security interests that are created pursuant to this agreement is at the sole discretion of the Company.
- 8.5. The customer agrees to indemnify Achievers Energy on demand for all costs and expenses, including legal costs and expenses on a solicitor / Customer basis, associated with the enforcement or attempted enforcement of any Security Interest granted to Achievers Energy by the Customer.
- 8.6. The customer agrees:
- 8.6.1. That nothing in sections 130 to 143 of the PPSA will apply to this Agreement or the Security under the terms of this agreement; and
- 8.6.2. To waive its right to do any of the following under the PPSA :
- 8.6.2.1. Receive notice of removal of an Accession under section 95;
- 8.6.2.2. Receive notice of an intention to seize Collateral under section 123;
- 8.6.2.3. Receive notice of disposal of Collateral under section 130;
- 8.6.2.4. Receive a Statement of Account if there is no disposal under section 130(4);
- 8.6.2.5. Receive notice of retention of Collateral under section 135;
- 8.6.2.6. Redeem the Collateral under section 142;
- 8.6.2.7. Reinstate the Security Agreement under section 143;
- 8.6.2.8. Object to the purchase of the Collateral by the Secured Party under section 129; and
- 8.6.2.9. Receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- 8.7. The customer agrees to reimburse the Company for any fees and charges connected with the registration, administration and communication in respect of security interests that are created pursuant to this agreement.

## 9. RETURNS AND WARRANTIES

### 9.1. The customer must:

9.1.1. Notify the Company of any Products that it receives that are damaged or faulty within 5 Business Days; and

9.1.2. Inspect the Products upon receipt to ensure quality.

9.2. Achievers Energy will not accept the return of any Products that have been subject to secondary transportation or handling by an End User or the Customer's contractors.

9.3. If a product is damaged or faulty and the Company is notified in accordance with item D of the Particulars, the Company will replace the product.

9.4. Achievers Energy does not provide the warranty on the Products that it distributes. All warranty claims on Products must be handled specifically by the company that issues the warranty in accordance with their claims processes.

## 10. STANDARD OF SERVICE

10.1. The parties agree that they shall conduct business in relation to the Products: 10.1.1. Ethically;

10.1.2. Responsibly;

10.1.3. In support of each other,

So that the Products and any associated services are marketed, sold, installed & supported to the highest possible standards, and that any action which compromises these values shall constitute a breach of this agreement.

10.2. The customer represents and warrants as follows:

10.2.1. **Installation.** Any installation services will be performed by accredited solar installer (sub-contractor) in accordance with Australian standards, as amended from time-to-time.

10.2.2. **Ethics.** The Customer agrees to act honestly, ethically & responsibly when marketing and selling the Products and shall uphold the best interests of the End User in its dealings.

10.2.3. **Promptly.** The Customer will provide the Services with due expedition and without necessary or unreasonable delay.

10.2.4. **Fit for purpose.** Any services provided by the Customer will be fit for the purpose required by the End User.

10.2.5. **Dispute resolution.** The parties shall first attempt to resolve any disputes in accordance with clause;

10.2.6. **Policies.** The Customer will comply with all applicable policies, procedures, rules, regulations, standards of conduct and requirements that the Company notifies it of in item F of the Particulars;

10.2.7. **Law and standards.** The Customer will comply with all the relevant laws and industry best practice standards in respect of providing the Services.

10.2.8. **Personnel.** The Customer will only engages or appoint suitably competent skilled and qualified Personnel to work on providing any services to End Users;

10.2.9. **Reputation.** The Customer will provide the Services in a manner that will not adversely affect or bring into disrepute the reputation of the Company.

10.2.10. **Appropriate tools.** The Customer will use equipment of a high standard that is fit for the purposes of carrying out any services.

## 11. INTELLECTUAL PROPERTY

11.1. Achievers Energy grants the Customer a revocable and non-exclusive licence over the Intellectual Property in the items listed in item G of the Particulars (IP Licence) for the term of this agreement.

11.2. The IP Licence is non-transferable, royalty free, and is restricted for use for the purposes of the Services and the Customer's day-to-day business within Australia.

11.3. The IP Licence applies severally to each category of Intellectual Property outlined in item G of the Particulars.

11.4. To the extent that any clause aligned with a category of Intellectual Property in item G of the Particulars is inconsistent with the licence in this clause 12, the terms in the Particulars will take precedence.

11.5. The Licensee agrees that its use of the Company Intellectual Property pursuant to the IP Licence is at its own risk.

11.6. The customer agrees to indemnify the Company for any loss, damage, cost or expense that it suffers or incur as a result of or in connection with the Customer's use of, or conduct in connection with, the Company Intellectual Property, including any breach by the Customer of this agreement or the law.

11.7. In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from your access to, or use of, or inability to use the Company Intellectual Property or any content, or in any way relating to an experience itself (or the provision or non-provision of an experience), whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Licensor knew or should have known of the possibility of such damage to business interruption of any type, whether in tort, contract or otherwise.

11.8. Certain rights and remedies may be available under the Competition and Consumer Act 2010 (Cth) or similar legislation of other states or territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company excludes all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted to the cost of replacement or repair.

## 12. CONFIDENTIALITY

12.1. The information and classes of information in item H of the Particulars are Confidential Information for the purposes of this agreement.

12.2. The customer acknowledges and agrees that:

12.2.1. The confidential Information is secret, confidential and valuable to the Company disclosing the information (**Discloser**);

12.2.2. It owes an obligation of confidence to the Discloser concerning the Confidential Information;

12.2.3. It must not disclose the Confidential Information to a third party except as permitted in this agreement;

12.2.4. All Intellectual Property rights remain vested in the Discloser by disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and

12.2.5. Any breach or threatened breach by the receiving party of an obligation under this agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.

12.3. The customer must notify the Discloser in writing giving full details known to it immediately it becomes aware of:

12.3.1. Any actual, suspected, likely or threatened breach by it of clause [.1];

12.3.2. Any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or

12.3.3. Any actual suspected likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.

12.4. The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:

12.4.1. Any actual, suspected, likely or threatened breach of a term of this agreement; or

12.4.2. Any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

## 13. TERMINATION

13.1. Achievers Energy may terminate this agreement:

13.1.1. At its sole discretion, with 20 Business Days written notice; or

13.1.2. Immediately with written notice if the Customer is in breach of this agreement.

13.2. Either party may terminate this agreement immediately with notice to the other party if an Insolvency Event occurs with respect to that party.

13.3. The customer will pay for all the Products in its possession within 5 Business Days following the effective date of termination.

#### **14. INDEMNITY AND LIMITATION OF LIABILITY**

14.1. The customer indemnifies the Company against any loss or claim arising from any act or omission of the Customer in connection with the Products or Services, arising from:

14.1.1. Negligence in connection with the Products or Services on the part of the Customer or its personnel;

14.1.2. Breach by the Customer or its personnel of its obligations under this document;

14.1.3. The customer or its personnel acting outside the scope of its authority under this agreement;

14.1.4. The use of the Products or Services to infringe or allegedly infringe on any Intellectual Property or other rights of any third party; and

14.1.5. Fraud, misrepresentation or willful misconduct by the Customer or its Personnel.

14.2. The liability of the Customer to the Company or vice versa will not be limited or affected in any way by any insurance policy procured by the Customer.

14.3. In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss connected with the Products or Services, or use of, or inability to use the Products, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage to business interruption of any type, whether in tort, contract or otherwise.

14.4. Certain rights and remedies may be available to the Customer under the Competition and Consumer Act 2010 (Cth) or similar legislation of other states or territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company excludes all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted to the cost of replacement or repair.

#### **15. DEFAULT**

15.1. If the customer is in breach of the payment terms in item B of the Particulars, the Company may:

15.1.1. Withhold supply of Product and dispose of the stock orders held;

15.1.2. Terminate the customer's credit facility; and

15.1.3. Issue a statutory demand for the debt immediately.

15.2. Achievers Energy will not be liable for any loss or damage resulting from any action authorized by clause 16.1.

15.3. If the customer does not pay in accordance with the Payment Terms the Company may charge interest at the rate set out in item B-2 of the Particulars.

15.4. Any costs (including legal costs on an indemnity basis) in connection with the collection of money unpaid from the Customer in accordance with payment terms will be added to the debt due from the Customer to the Company.

## **16. DISPUTE RESOLUTION**

16.1. If any dispute arises between the Customer and the Company in connection with this agreement (**Dispute**), then either party may notify the other of the Dispute with  
a notice (**Dispute Notice**) which:

16.1.1. Includes or is accompanied by full and detailed particulars of the Dispute; and

16.1.2. Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

16.2. Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of the Customer and Company must meet and seek to resolve the Dispute.

16.3. Except for the company recovering for unpaid monies, a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

16.4. Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

16.5. Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

## **17. FORCE MAJEURE**

17.1. If a party to this document is affected, or likely to be affected, by a Force Majeure Event, that party must immediately give the other prompt notice of that fact including:

17.1.1. Full and detailed particulars of the Force Majeure Event;

17.1.2. An estimate of its likely duration;

17.1.3. The obligations affected by it and the extent of its effect on those obligations; and

17.1.4. The steps taken to rectify it.

17.2. The obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

17.3. A party claiming a Force Majeure Event must use its best endeavors to remove, overcome or minimize the effects of that Force Majeure Event as quickly as possible.

17.4. During any period in which a party to this document is not performing obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.



## 18. ELECTRONIC COMMUNICATION, AMENDMENT AND ASSIGNMENT

- 18.1. The words in this clause that are defined in the Electronic Transactions Act 1999 (Cth) have the same meaning.
- 18.2. Each party to this agreement agrees to the clauses in the Particulars and the Special Conditions. The Particulars, Special Conditions and the General Conditions form a single legal agreement. To the extent that the Particulars or the Special Conditions are inconsistent with the General Conditions, the terms of the Particulars will prevail. To the extent that the Special Conditions are inconsistent with the Particulars, the Special Conditions will prevail.
- 18.3. A consent, notice or communication under this agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- 18.4. Notices must be sent to the parties contact details as specified in item A of the Credit Applications.
- 18.5. The parties to this agreement may only assign or otherwise create an interest in their rights under this document with the written consent of each other party.

## 19. GENERAL

- 19.1. **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 19.2. **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 19.3. **Waiver.** No clause of this agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 19.4. **Further assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- 19.5. **Governing law.** This agreement is governed by the laws of the state set out in the particulars. Each of the parties here by submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- 19.6. **Liability of expenses.** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.
- 19.7. **Inconsistency.** If this Agreement is inconsistent with any other document or Agreement between the parties, this document prevails to the extent of the inconsistency.
- 19.8. **Counterparts.** This agreement may be executed in any number counterparts. All counterparts together will be of taken to constitute one instrument.
- 19.9. **Time.** Time is the essence in this agreement.
- 19.10. **Severability.** Any clause of this agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this agreement.