

## **Run Energy**

### **Terms and Conditions for Supply of Goods and Services**

#### **1.0 Interpretation**

In these terms and conditions:-

(a) the following words shall have the meanings assigned to them:

“Contract”	means the agreement between the Customer and Run Energy for the supply of the Goods and/or the Services, formed upon the acceptance by Run Energy of the Customer’s Purchase Order;
“Customer”	means the person or entity named as purchaser in the Customer’s Purchase Order;
“Customer’s Purchase Order”	means the purchase order or other similar document issued by the Customer seeking the supply of the Goods and/or the Services;
“Goods”	means components, equipment and other materials described in the Customer’s Purchase Order;
“Intellectual Property Rights”	means any intellectual property rights (whether registered or not) including without limitation patents or other rights attaching to inventions, designs, know-how, trademarks, copyright and circuit layouts;
“Run Energy”	means the Run Energy entity making the tender, proposal or offer to the Customer and which accepts the Customer’s Purchase Order;
“Run Energy’s IP”	means Intellectual Property Rights held by or licensed to Run Energy in the Goods and/or Services at the date of or which come into existence during the Contract; and
“Services”	means the labor services described in the Customer’s Purchase Order,

and

(b) the singular includes the plural and vice versa and words importing one gender include each other gender.

#### **2.0 Terms**

These terms and conditions apply to the supply of the Goods and/or the Services by Run Energy. Changes to these terms and conditions will only be binding if agreed in writing by an authorized representative of Run Energy.

### **3.0 Payments**

- 3.1 Except where otherwise specifically stated, prices payable are exclusive of sales, use, goods and services, value added or other similar taxes applicable in the place where the Goods and/or the Services are to be supplied. Such taxes shall be borne solely by the Customer and, where Run Energy is obliged by law to pay such taxes, an equivalent amount shall be added to the Contract price, subject to Run Energy issuing an invoice for same.
- 3.2 The Customer shall pay all amounts owed to Run Energy in full within 14 days of the date of Run Energy's invoice or by such other date as is specified or agreed to by Run Energy. If the Customer disputes an invoice amount, the Customer shall notify Run Energy of the dispute (stating reasons) and pay any amount not disputed by the due date for payment.
- 3.3 Time for payment is of the essence and a material condition of the Contract. If the Customer fails to pay when due an amount not in dispute and such failure continues for 5 days after Run Energy gives notice of non-payment to the Customer and of its intention to terminate, Run Energy may immediately terminate the Contract by giving notice to the Customer.
- 3.4 Run Energy may charge interest on amounts overdue from the due date until paid, at the maximum rate prescribed by law in the place where the Goods and/or the Services are supplied or, if none is prescribed, at the rate of 5% per annum above the Prime Rate quoted in the Wall Street Journal as at the close of business on the last day before the due date.

### **4.0 Site Access, Safety and Security**

- 4.1 The Customer will be responsible for providing Run Energy with suitable and timely access to the Customer's site for the delivery of Goods and/or the supply of Services.
- 4.2 The Customer shall provide Run Energy's personnel with an appropriate site specific health and safety orientation prior to the commencement of the Services and a safe working environment.
- 4.3 Run Energy shall, in providing Services on the Customer's site, comply with all reasonable directions given by the Customer for safety and security purposes.

### **5.0 Warranties**

- 5.1 Run Energy warrants to the Customer that the Services will be performed in accordance with good industry practice. The warranty period is 6 months from the date of final invoice. During the warranty period, upon written request and corroboration, Run Energy will promptly re-perform Services that breach this warranty.
- 5.2 For Goods manufactured by Run Energy, Run Energy warrants to the Customer that the Goods will be free from defects in workmanship or materials. The warranty period is 12 months from date of the final invoice. During the warranty period, Run Energy will promptly repair or replace Goods that breach this warranty. The warranty will become null and void if the Customer's use of the Goods is not in accordance with Run Energy's specifications.

- 5.3 For Goods not manufactured by Run Energy, Run Energy shall use its reasonable endeavors to (a) assign to the Customer the benefit of all assignable warranties given by manufacturers and suppliers of Goods that are supplied by Run Energy and (b) assist the Customer in making any claims in accordance with such warranties.
- 5.4 The warranties given in Sections 5.1 and 5.2 and the commitment to assign warranties made in Section 5.3 are given and made in place of all warranties and conditions allowed by law, trade custom, course of dealing or otherwise, including warranties or conditions as to merchantable quality and/or fitness for purpose, all of which are expressly excluded to the fullest extent allowed by law.
- 5.5 Run Energy's liability to the Customer for breach of warranty or condition shall not in any event exceed (a) the cost to Run Energy of re-performing the Services, (b) for Goods manufactured by Run Energy, the cost to Run Energy of replacing the Goods and (c) for Goods not manufactured by Run Energy, the actual amount received by Run Energy from manufacturers or suppliers of such Goods under warranties given by them, whichever is applicable.

## **6.0 Indemnity and Limit of Liabilities**

- 6.1 Each party (the "Indemnifying Party") indemnifies and agrees to keep indemnified the other party (the "Other Party") against any claim resulting from injury or death of any persons, its employees, agents or contractors, caused by any negligent act or omission or willful misconduct of the Indemnifying Party.
- 6.2 Neither party will be liable to the other for any incidental, indirect, special or consequential damages arising out of or in connection with the supply of the Goods and/or the Services (except for damages arising out of a breach of Article 11).

## **7.0 Assignment**

Run Energy may subcontract or assign the performance of the Services but shall remain responsible to the Customer for the work. Except for that right and the assignment of manufacturer and supplier warranties in accordance with Section 5.3, neither party may assign its rights under the Contract in whole or in part without the prior written consent of the other party, but such consent shall not be unreasonably withheld or delayed.

## **8.0 Force Majeure**

Run Energy will not be liable for any delay in performing any of its obligations under the Contract if such delay is caused by circumstances beyond its reasonable control and will be entitled to a reasonable extension of time for the performance of such obligations in such event.

## **9.0 Governing Law & Dispute Resolution**

- 9.1 The Contract shall be governed by the laws and the courts of the state, province, region, territory or country ("Jurisdiction") in which Run Energy is organized, incorporated or otherwise created.
- 9.2 The parties must first endeavor to resolve any dispute arising out of or in any way related to the Contract by negotiation.
- 9.3 If the parties fail to resolve a dispute by negotiation within a reasonable time, at the request of either party, the dispute shall be resolved by binding arbitration, in accordance with usual commercial arbitration procedures in the Jurisdiction. All costs of arbitration shall be shared equally by the parties, except for attorney's fees which shall be borne by the party incurring same, subject to any arbitrator's award.

## **10.0 Independent Contractor**

Run Energy must perform the Services as an independent contractor and neither it nor any of its sub-contractors nor their respective employees will be the employee or agent of the Customer for any purpose.

## **11.0 Confidentiality and Rights**

- 11.1 Each party must, and must use reasonable endeavors to ensure that its sub-contractors and its personnel, keep secret and confidential and not (unless compelled by law) disclose to any third party any information, data, specifications, drawings, reports or other documents of a confidential nature supplied to it by the other party and which is not in the public domain. Each party must take or cause to be taken such reasonable precautions as may be necessary to maintain the secrecy and confidentiality of such information.
- 11.2 (a) The Customer acknowledges that Run Energy shall remain the owner of Run Energy's IP. The Customer shall not use Run Energy's IP without Run Energy's prior written approval except to the extent necessary to use the Goods/and or Services in the manner contemplated in the Contract.
- (b) The Customer shall not represent that it has any ownership interest in Run Energy's IP nor contest nor impair Run Energy's right, title or interest in Run Energy's IP during the currency of the Contract or at any time afterwards.
- 11.3 This Article 11 shall survive termination of the Contract.