**These Terms and Conditions (“Conditions”) apply to all Purchase Orders issued by FUJIFILM Australia Pty Ltd on and after 9 November, 2015.**

**These Conditions govern the acquisition of the Supplies from the Supplier by the Buyer pursuant to the Purchase Order.**

1. **Definitions**

“**Business Day**” means a day which is not a Saturday, Sunday or public holiday in the State or Territory where the Supplies will be provided.

**“Buyer”** means FUJIFILM Australia Pty Ltd (ABN 80 000 064 433) of 114 Old Pittwater Road, Brookvale, New South Wales 2100, Australia, unless another entity is expressly identified as the buyer in the Purchase Order, in which case the Buyer is that other entity.

“**Buyer Requirements**” means:

1. the Supplies are delivered in full in accordance with the Purchase Order, including quantity;
2. the Supplies are in strict conformance with the Specifications;
3. the Supplies are consistent with any representations made by the Supplier to the Buyer prior to issuing the Purchase Order;
4. the Supplies are of an acceptable, merchantable quality and are fit for the purpose for which such Supplies are normally acquired, or if applicable, made known to the Supplier by the Buyer prior to issuing the Purchase Order;
5. the Supplies comply with all applicable Laws;
6. the Supplies do not infringe any third party rights (including Intellectual Property Rights);
7. in the case of Services:
8. the Services will be performed with due skill and diligence in accordance with industry best practice or if there is no established industry practice, reasonable practice, by appropriately trained and experienced personnel with all necessary qualifications; and
9. the Services will be performed in accordance with any Milestone;
10. in the case of Goods:
11. the Supplier has the title and right to sell the Goods to the Buyer, free from all encumbrances, and the Buyer will enjoy quiet possession of the Goods;
12. the Goods are delivered complete, suitably packed, undamaged and in accordance with any Milestone;
13. the Supplier will ensure at all times that facilities for the repair of the applicable Goods and the supply of parts for the applicable Goods are available for a reasonable period of time after the Goods are delivered to the Buyer; and
14. the Goods are the same as any sample provided or demonstration given by the Supplier prior to the Purchase Order being issued.

**“Confidential Information”** means all information and data, in any form, regardless of how the information is stored by or delivered to, learnt or created by the Supplier before, prior to or after the date of issue of the Purchase Order relating to the business, technology or other affairs of the Buyer, any of its Related Bodies Corporate and any of its suppliers, customers , or affiliates but does not include information which is in or becomes part of the public domain other than through breach of these Conditions or an obligation of confidence owed to the Buyer or any Related Body Corporate.

“**Goods**” means any goods, including any software, specified in the Purchase Order and any deliverable or work product produced by the Supplier for the Buyer in the course of performing Services.

“**GST**” has the meaning given to the expression “tax” as it appears in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

“**Insolvency Event**” means the Supplier becomes insolvent, is placed under administration or is bankrupt, is unable to pay their debts as they become due, or such other event occurs which the Buyer reasonably considers is similar to insolvency, administration or bankruptcy.

“**Intellectual Property Rights**” means all current and future, registered and unregistered rights in Australia and throughout the world in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

“**Law**” means any statute, ordinance, code or other law including regulations under them and any code of practice, practice notes, guidelines, rules, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law.

“**Liability**” means any loss, liability, cost, outgoings or expense.

“**Location**” means the location(s) notified by the Buyer to the Supplier for the delivery of the Goods and/or the performance of the Services.

**“Milestones”** means any dates, times and service levels specified in the Purchase Order.

**“Price”** means the price, fee or charge set out in the Purchase Order in relation to a Supply.

**“Privacy Act”** means any Law which relates to the protection of personal information.

**“Policy”** means any Buyer policy, procedure, work instruction, code or guide which is advised by Buyer to Supplier in writing from time to time.

**“Purchase Order”** means a purchase order issued by the Buyer.

**“Related Bodies Corporate”** has the meaning set out in clause 50 of the *Corporations Act 2001* *(Cth).*

“**Services**” means the services specified in the Purchase Order (if any).

“**Specifications**” means the manufacturer’s published specifications, any written statement of requirements provided to the Supplier by the Buyer, any particulars included and any documents cross referenced in the Purchase Order.

**“Supplier”** means the supplier or seller specified in the Purchase Order.

“**Supplies**” or **“Supply”** means the Goods and Services.

 **“Valid Invoice”** means a tax invoice which:

1. is in accordance with the GST Law;
2. accurately describes the Supplies and the Price;
3. relates to Supplies which are provided in full in accordance with these Conditions, including but not limited to in conformance with the Buyer Requirements; and
4. quotes the Purchase Order number.
5. **Purchase Orders**
6. A Purchase Order creates a binding obligation on the Supplier to provide the Supplies when it is received by the Supplier. These Conditions apply to and form part of all Purchase Orders.

In the absence of a valid Purchase Order in relation to the Supplies:

1. the Buyer has no obligation to acquire the Supplies from the Supplier; and
2. the Supplier must not provide the Supplies to the Buyer.
3. In the event of a conflict between the terms of the Purchase Order and these Conditions, these Conditions shall prevail unless the relevant clause of the Conditions is expressly stated in the Purchase Order to be amended or removed by the Purchase Order.
4. Unless the Purchase Order expressly states otherwise the Buyer is free to acquire the same or similar Supplies from any person.
5. Any terms or conditions contained or referred to in the Supplier’s quotation, invoice or other documentation or websites which may be contrary to or differ from these Conditions shall be void to the extent of any inconsistency. The Buyer shall not be deemed to have waived any of these Conditions (including this clause 2.4) if it fails to object to any of the Supplier’s terms and conditions.
6. **Delivery**
	1. The Supplier must:
7. deliver, and if necessary, install and configure, the Goods; and
8. perform the Services,

at the Location, in accordance with the Milestones and the Buyer’s reasonable directions.

* 1. The Buyer may, at any time prior to delivery of the Goods, or the commencement of the performance of the Services, and without Liability to the Supplier (other than the requirement to pay the Price for any increase in the quantity of Supplies under paragraph (d)):
1. vary the Location;
2. vary the Milestones;
3. terminate or suspend the Purchase Order ; or
4. vary the quantity or composition of Goods or Services, set out in the Purchase Order, by advising the Supplier in writing, and in the case of termination under clause 3.2(c), the Supplier must refund any prepayments made in respect of Supplies which have not been or will not be provided.
5. **Title, Risk and Quality of Supplies**
6. Unless otherwise specified in the Purchase Order, title and physical risk in Goods passes to the Buyer upon delivery.
7. The Buyer may, at its option, inspect or test the Supplies to determine if the Supplies meet the Buyer Requirements. Upon request by the Buyer, the Supplier shall grant the Buyer’s representatives access to the Supplier’s premises for the purposes of inspecting or testing the Supplies, or observing the manufacturing process.
8. Without limiting any other rights or remedies it may have at Law, if the Buyer, acting reasonably, upon inspecting, testing or using the Supplies, determines that the Supplies are not in accordance with any of the Buyer Requirements, the Buyer may, at its option:
9. require the Supplier to, at the Supplier’s cost, remedy the deficiency in the Goods and redeliver the Goods to the Buyer and/or remedy the deficiency in the Services and re-perform the Services;
10. itself remedy the deficiency in the Supplies and recover the costs of doing so from the Supplier; or
11. reject the Supplies and terminate the Purchase Order in whole or in part, and obtain a full refund of any amount already paid pursuant to the cancelled Purchase Order or part thereof.
12. The rights set out in clause 4.3 are cumulative. The Buyer may rely upon a provision in clause 4.3 and if the exercise of that right is not successful in overcoming the deficiency, the Buyer may rely upon another right in clause 4.3.
13. Inspection, testing and use by the Buyer without identifying a defect in the Supplies or a failure to inspect or test, does not extinguish any rights of the Buyer or limit the obligation on the Supplier to perform in accordance with these Conditions.
14. If a Purchase Order is terminated under clause 4.3(c):
15. the Buyer may reject the Supplies provided or to be provided under any other Purchase Order(s), where the other Supplies form part of a system or are necessary to enjoy the benefit of the Supplies to which the terminated Purchase Order relates;
16. the Buyer may terminate the other Purchase Order(s) referred to in clause 4.6(a) and the Supplier must refund any prepayments made in respect of Supplies which have not been or will not be provided ; and
17. provided a full refund is received from the Supplier, the Buyer will return the Goods to the Supplier.
18. The Supplier must notify the Buyer of all relevant information regarding any potential hazards that may arise in relation to the Supplies, including any hazards that may arise from the transport, handling or use of the Goods or the provision of the Services.
19. A Safety Data Sheet (SDS) written in English, must accompany, the first delivery of relevant materials and each first delivery following a change to the materials’ SDS. SDS must thereafter be provided by the Supplier upon the Buyer’s request.
20. **Price and Payment**
21. In consideration for the provision of the Supplies, and subject to the Supplier’s compliance with the Purchase Order and these Conditions and the Buyer’s rights under the Purchase Order and these Conditions, the Buyer shall pay the Supplier the Price.
22. Unless otherwise specified in these Conditions or the Purchase Order:
23. the Price shall be inclusive of all Supplier costs, expenses, tariffs, outgoings and taxes (including any costs of packaging, packing, shipping, carriage, insurance and delivery) and shall not be increased unless agreed in writing by the Buyer;
24. the Supplier shall not invoice the Buyer prior to delivery; and
25. the Buyer shall pay the Supplier the Price within 45 days from the later of the date of a Valid Invoice or the date of receipt of a Valid Invoice from the Supplier. In the absence of a Valid Invoice, the Buyer has no obligation to pay the Supplier.
26. Payment of the Price by Buyer to the Supplier is without prejudice to any rights or remedies the Buyer may otherwise have at Law.
27. If at any time the Buyer either disputes the amount of an invoice, or, advises the Supplier that the Goods or Services to which a disputed amount relates do not comply with these Conditions (“**Disputed Amount**”), then the Buyer does not have to pay the Disputed Amount until the dispute has been resolved. The Buyer is however obliged to pay any undisputed amounts. The Supplier may not, wholly or partially, suspend, cancel, or withdraw the provision of the Goods or the performance of Services pursuant to a Purchase Order merely on the basis that an invoice is being disputed.
28. **GST**
29. Unless otherwise expressly stated in the Purchase Order, all consideration to be provided under the Purchase Order and these Conditions is inclusive of GST.
30. Where consideration is stated to be exclusive of GST, the Supplier is entitled to recover GST at the prevailing rate providing that the Supplier is duly registered for GST and it provides the Buyer with a Valid Invoice.
31. Where the Buyer is expressly required to pay for or reimburse an expense or outgoing of the Supplier, the amount to be paid by the Buyer is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing to which the Supplier is entitled plus any GST payable by the Supplier in respect of the supply to the Buyer.
32. Where at any time an adjustment event arises in respect of any supply made by the Supplier, the Supplier must provide the Buyer with an adjustment note in respect of the adjustment event as soon as practicable after the occurrence of the adjustment event.
33. **Software**
34. This clause 7 shall apply only to software supplied by the Supplier.
35. The definition of “Goods” shall include the physical media on which software which is the subject of the relevant Purchase Order is provided.
36. The Supplier grants the Buyer, or will procure the grant to the Buyer, and its Related Bodies Corporate, of a worldwide, perpetual, non-exclusive, non-transferable licence to reproduce and use the software, including the making of a reasonable number of back-up copies.
37. The Supplier represents, warrants and undertakes that:
38. the software will be compatible with and will not adversely affect the operation of any software or equipment owned or operated by the Buyer;
39. the Supplier has, using the most up-to-date software available, tested for (and deleted) all commonly known viruses in the software and for all viruses known by the Supplier at the date of this Purchase Order;
40. the software does not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or harmful components;
41. the software will be the most up-to-date version of the software that is available at the time it is provided to the Buyer, and the Supplier will provide the Buyer with all subsequent updates and upgrades to the software at no additional cost.
42. **Documentation**
43. The Supplier must provide such documentation as is reasonably necessary for the Buyer to use and enjoy the benefit of the Supplies.
44. **Personnel and Subcontractors**
45. The Supplier shall be and shall remain liable for any and all Liabilities howsoever arising out of or in connection with the acts or omissions of the Supplier’s employees, agents or subcontractors.

The Supplier must not subcontract its obligations under the Purchase Order without the prior written approval of the Buyer.

1. The Buyer may on reasonable grounds require that one or more of the Supplier’s employees, agents or subcontractors be removed and replaced to the reasonable satisfaction of the Buyer.
2. **Buyer Requirements**
3. The Supplier represents, warrants and covenants to the Buyer that:
4. the Supplies will meet the Buyer Requirements at all times;
5. the Supplier has all necessary permits, licences, certificates and accreditation necessary to deliver and supply the Goods and perform the Services in accordance with a Purchase Order and these Conditions;
6. the Supplier will comply with any lawful or reasonable instructions of the Buyer; and
7. the Supplier will comply with the Buyer’s Policies, including Policies relating to procurement, work health and safety, information security, and sustainability.
8. **Liability and Indemnity**

11.1To the maximum extent permitted by law, the Buyer shall not be liable to the Supplier whether in contract, indemnity, tort (including negligence), breach of statutory duty (to the extent that liability can be excluded) or otherwise for any Liability arising from or connected with the procurement of the Supplies which is: indirect, special, punitive or consequential loss or damage; a loss of opportunity or goodwill; a loss of revenue or profit; a loss of anticipated savings or business; loss arising from business interruption; and any costs or expenses suffered or incurred by the Supplier in connection with the foregoing.

11.2The Supplier shall indemnify the Buyer for all Liabilities (including legal fees and disbursements on a solicitor – client basis) suffered or incurred by the Buyer in connection with, arising from or as a result of the following:

1. the Goods supplied or the Services performed by the Supplier;
2. any negligence, wilful default, unlawful or wrongful act or omission of the Supplier, its employees, subcontractors or agents;
3. any death or injury to a person, and any loss or damage to the Buyer’s real or personal property or that of a third party, caused by the Supplier’s act or omission;
4. any breach of the Purchase Order or these Conditions by the Supplier, its employees, subcontractors or agents;
5. any Liability arising from or in connection with any third party claim relating to the Supplies (including any claim that the Supplies infringe any of the Intellectual Property Rights or other rights of a third party) or the acts or omissions of the Supplier, its employees, subcontractors or agents;
6. any Goods withdrawal or recall (whether the Goods are withdrawn from show or recalled voluntarily, or as a result of governmental direction) including but not limited to the cost of withdrawal or recall, the cost of the return of the Goods to the Supplier, the cost of the destruction of the Goods and any legal costs on a solicitor and own client basis; and
7. the Buyer breaching any contracts or arrangements it has entered into with any third party due to the Supplier’s failure to deliver any Goods or perform any Services in accordance with the Purchase Order and these Conditions.
8. **Insurance**
9. The Supplier must obtain, and keep in force for 7 years from the date of the Purchase Order:
10. public liability insurance for a minimum of $10 million per occurrence;
11. product liability insurance for personal injury or property damage caused by the Goods for a minimum of $10 million per occurrence;
12. workers compensation insurance in accordance with statutory requirements and limits; and
13. any other insurances required by law or that a prudent supplier in the same industry as the Supplier would obtain, including:
14. a minimum of $10 million of professional indemnity per occurrence in the event that the Supplies include advice or consulting or similar professional services; and,
15. a minimum of $10 million of IT liability insurance per occurrence, in the event the Supplies include the supply of information technology Goods or Services.
16. If requested by the Buyer at any time, the Supplier must provide the Buyer with a certificate of currency for each insurance policy required under clause 12.1.
17. **Termination**
18. Without prejudice to any other right or remedy that the Buyer may have, the Buyer may terminate any or all Purchase Orders that it has issued to the Supplier in whole or in part by written notice to the Supplier without any Liability on the part of Buyer if:
19. the Supplier breaches any Condition (including any of the Buyer Requirements) and, such breach is incapable of remedy or is capable of remedy but the Supplier fails to remedy the breach within 10 days; or
20. the Supplier becomes subject to an Insolvency Event.
21. The Buyer may immediately upon giving notice terminate the Purchase Order for convenience.
22. Where the Purchase Order is terminated under clause 13.2, the Buyer shall only be liable to pay for any Goods or Services delivered as at the date of the termination notice, except in relation to Goods that have been designed or manufactured specifically for the Buyer under the Purchase Order, in which case the Buyer shall be liable for the reasonable, vouched costs incurred by the Supplier associated with procuring parts or materials and work performed in relation to the manufacturing of the Goods as at the date of the termination notice, after all efforts are made by the Supplier to mitigate such costs and losses, and providing that the amount does not exceed the Price.
23. **Intellectual Property Rights and Software**
24. Unless otherwise specified in the Purchase Order:
25. the Supplier retains all title and proprietary interests to all its pre-existing Intellectual Property Rights;
26. all new Intellectual Property Rights that are created or come into existence in the course of manufacturing the Goods or performing the Services vest in the Buyer; and
27. where the Supplier retains ownership over its Intellectual Property Rights, the Supplier grants the Buyer and its Related Bodies Corporate a worldwide, non-exclusive, irrevocable and royalty free licence to reproduce, modify, exploit, and adapt the Intellectual Property Rights included in the Supplies (other than software) for the business purposes of the Buyer or its Related Bodies Corporate for the purpose of obtaining the full benefit of the Supplies, and without further reference to the Supplier.
28. **Confidentiality and Privacy**
29. The Supplier agrees:
30. to use the Confidential Information solely for the proper performance of its responsibilities under the Purchase Order;
31. to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information; and
32. not to copy or remove from the Buyer’s premises any Confidential Information without the Buyer’s consent.
33. The Supplier must not disclose any of the Confidential Information to any person except:

a) its employees, agents or subcontractors who require the Confidential Information for the purposes of complying with the Supplier’s obligations under the Purchase Order;

b) with the prior written consent of the Buyer; or

c) to the extent the Supplier is required to do so by Law or a stock exchange.

1. The Supplier must:
2. ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 15.2; and
3. immediately notify the Buyer of any suspected or actual unauthorised, access, use, copying or disclosure of the Confidential Information.
4. Upon the Buyer’s request, the Supplier must immediately deliver to the Buyer all documents or other materials containing or referring to the Confidential Information which are in the Supplier’s possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Supplier under clauses 15.2(a) or (b).
5. The Supplier must not make any statement, press release or other announcement relating to any of its transactions with the Buyer without the Buyer’s prior written consent.
6. The Supplier must comply with the Privacy Act and any relevant Policy in relation to any Personal Information disclosed to or collected by the Supplier and not do or omit to do anything which causes the Buyer to breach its obligations under the Privacy Act.
7. **Entire Agreement and Variation**
8. The Purchase Order and these Conditions contain the entire agreement between the parties in relation to their subject matter and no variation shall be effective unless in writing and signed by both parties or expressly set out in the Purchase Order issued by the Buyer.
9. **Assignment and Novation**
10. The Supplier must not assign, novate or otherwise deal with any of its rights or obligations under the Purchase Order or these Conditions without the prior written consent of the Buyer.
11. The Buyer may novate, assign or otherwise deal with any of its rights or obligations under the Purchase Order or these Conditions without obtaining the Supplier’s consent. The Supplier will execute all documents and do all things reasonably required by the Buyer to give effect to any assignment or novation contemplated by this clause 17.2.
12. **Complaint Process**

18.1 The Buyer may refer any complaint received about the Goods directly to the Supplier. The Supplier must action the complaint with a response to the customer or complainant within 2 Business Days (except if, in the reasonable opinion of the Buyer, a response is required within 24 hours, in which case the Buyer will notify the Supplier in writing of the shorter response time) and, on request, provide the Buyer with copies of relevant correspondence.

18.2 The Supplier must forward to the Buyer any report made pursuant to an investigation into the complaint by a government body or any researcher or research organisation with respect to the Goods as soon as reasonably practicable after the Supplier becomes aware of any such report. The Supplier must comply with any reasonable directions given by the Buyer in relation to the complaint.

1. **Survival and Severance**

19.1 The following provisions of these Conditions survive the performance or termination of the Purchase Order: 10-11 and 14-21 (inclusive).

19.2 If any provision of these Conditions is or becomes illegal, invalid or unenforceable in whole or in part, such provision or part shall to that extent be deemed not to form part of this agreement and shall not affect the legality, validity or enforceability of the remainder of this agreement.

1. **Waiver**

20.1 Any failure or delay by the Buyer to exercise or enforce any right shall not be considered to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

1. **Governing Law and Jurisdiction**

21.1 All Purchase Orders and these Conditions shall be governed by and construed in accordance with the laws of New South Wales, Australia.

21.2 The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales and courts which have jurisdiction to hear appeals from any of those courts.