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STANDARD TERMS AND  
CONDITIONS FOR SUPPLIERS

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## 1. DEFINITIONS

In this Order:

Conditions: means these standard terms and conditions for suppliers.

GST: for the purpose of these conditions "GST" means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999.

SAGE: means SAGE Group Holdings Ltd ABN 58 093 581 330 and any related body corporate (within the meaning of the *Corporations Act*), including SAGE Automation Pty Ltd ABN 59 104 119 833.

Order: means the purchase order sent by SAGE to the Supplier via email, facsimile or mail and any listed attachments which together make up the contract between SAGE and the Supplier.

Supplier: means the person or company on whom the Order is placed.

Supplies: means all goods and services detailed on the Order.

Security of Payment Act: means where the works are located in:

New South Wales - the *Building and Construction Industry Security of Payment Act 1999* (NSW);

Victoria - the *Building and Construction Industry Security of Payment Act 2002* (Vic);

Queensland - the *Building and Construction Industry Payment Act 2004* (Qld);

Western Australia - the *Construction Contracts Act 2004* (WA);

South Australia - the *Building and Construction Industry Security of Payment Act 2009* (SA);

Tasmania - the *Building and Construction Industry Security of Payment Act 2009* (Tas);

Australian Capital Territory - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT); and

Northern Territory - the *Construction Contracts (Security of Payment) Act 2004* (NT).

## 2. APPLICATION

2.1 These conditions shall apply to the Order except where modified by supplementary conditions otherwise incorporated in writing on the Order, which shall have precedence over these conditions.

2.2 These conditions and any supplementary conditions referred to in 2.1, shall be the entire agreement between SAGE and the Supplier, and shall supersede all previous communication or representations between SAGE and the Supplier, including any standard conditions of sale issued by the Supplier. These conditions shall not be varied unless agreed in writing by SAGE.

2.3 SAGE's Order number, where applicable, must be quoted on all documents and correspondence relating to the Order.

## 3. PRECEDENCE

3.1 The order may include additional or special terms and conditions which are expressed to override, exclude or modify these conditions. Where such terms are included the following order of precedence shall apply to the extent of any inconsistency:

3.1.1 the terms of the Purchase Order; and

3.1.2 these conditions.

## 4. DELIVERY

- 4.1 The Supplies shall be delivered to the place(s) named in the Order no later than the dates specified in the Order. Time is of the essence in relation to the date of the supply. Partial deliveries shall not be made unless agreed in writing by SAGE.
- 4.2 The Supplies shall be packed to a good commercial trade pack standard suitable for the designated mode of transport and in a manner which will prevent damage.
- 4.3 The Supplier must comply with, and ensure its agents and/or subcontractors comply with, all reasonable directions given by SAGE in relation to access to SAGE's premises.
- 4.4 The Supplier must promptly inform SAGE of any anticipated or actual delays.

## 5. RISK AND TITLE

- 5.1 Risk and Unencumbered Title to the Supplies shall pass to SAGE on delivery unless otherwise specified in the Order, but without prejudice to any right of rejection which may accrue to SAGE hereunder.
- 5.2 Any Supplies delivered in damaged condition or does not comply with the Order may be rejected and returned by SAGE to the Supplier at the Suppliers expense. Risk and Title in such rejected Supplies will remain with the Supplier.
- 5.3 All Supplies delivered are subject to inspection by SAGE. Notwithstanding that Risk and Unencumbered Title may have passed, SAGE may reject Supplies if they are found unfit for purpose, defective or not in accordance with the specification referred to in the Order. Inspection and rejection must occur within a reasonable time from delivery. Supplies may be rejected by SAGE where they are found to be defective after inspection and where such defect is of a nature that it was not apparent upon reasonable examination on delivery.
- 5.4 If any of the Supplies are not delivered by the date(s) specified in the Order, SAGE shall be entitled:
  - 5.4.1 to return to the Supplier at the Supplier risk and expense any of the Supplies already delivered but which cannot be effectively and commercially used, and to recover from the Supplier any moneys paid by SAGE for such Supplies; and
  - 5.4.2 to recover from the Supplier any additional expenditure reasonably incurred by SAGE in obtaining other equivalent Supplies in replacement.

## 6. PRICE AND PAYMENT

- 6.1 Prices shall be non-variable and inclusive of all taxes (including GST), duties, packaging and delivery of the Supplies to the destination stated in the Order.
- 6.2 After delivery of the Supplies, invoices shall be submitted to SAGE at the address stated on the Order and marked for the attention of the Accounts Department.
- 6.3 SAGE requires invoices to be provided in the approved GST format and requires any applicable Australian GST to be separately identified on the invoice. Invoices not in the required format will not be processed by SAGE.
- 6.4 All invoices raised must detail the Order number and match the Order specifically with regard to the price, quantity and unit of measure. Invoices must be submitted in the same currency as the Order. All non-compliant invoices will be rejected.

- 6.5 Invoices will be paid by SAGE by the end of the month following the month in which the invoice is received unless otherwise agreed in writing.
- 6.6 SAGE is entitled to set off from any amount owed by SAGE to the Supplier any amount the Supplier owes SAGE, whether under these conditions or otherwise.
- 6.7 SAGE may withhold payment for Goods or Services supplied that it disputes in good faith until the dispute has been resolved. SAGE will notify the Supplier if it intends to rely on this clause.

## 7. CONFIDENTIALITY

- 7.1 The Supplier shall:
  - 7.1.1 not use the information in the Order except for the purpose of supplying the Supplies to SAGE;
  - 7.1.2 not grant third parties access to Order information without the prior written consent of SAGE, and only use such information for the purpose for which the consent is granted;
  - 7.1.3 require any third party to whom Order information is provided to sign an undertaking in the same terms as the Suppliers undertaking.
- 7.2 The Supplier shall not use SAGE's name or any of the Order information for publicity purposes without SAGE's prior written consent.

## 8. INSURANCE

The Supplier agrees to maintain insurance cover with a reputable insurer for the following classes of risk in respect of work to be carried out under the Order:

- 8.1 Public and product liability insurance covering liability to any third party for death or bodily injury (including illness) and loss of and/or damage to property arising out of anything done or omitted to be done by the supplier for the sum of AUD\$5m.
- 8.2 Workers compensation insurance covering liability to employees of the Supplier under the laws of their place of employment and any other place where such employees may be required to supply any of the services.
- 8.3 Such other classes as are appropriate to the circumstances of the Order as specified by SAGE, including Professional Indemnity if required in the Order.

## 9. CONFORMITY WITH ORDER

- 9.1 The Supplier warrants that the Supplies shall conform to the quantity, quality (including quality assurance requirements) and specification stated in the Order, and shall be free from defect in design (except where SAGE is the design agent), materials and workmanship and all service will be rendered with due skill and care
- 9.2 The Supplies will be of a safety standard that could reasonably be expected of such Supplies and will comply with all relevant Australian Standards.
- 9.3 If the Supplies do not conform to the quantity, quality (including quality assurance requirements) or specification stated in the Order, or do not meet the required standards of design, material or workmanship, then SAGE shall be entitled, without prejudice to any other remedy, to exercise one or more of the following rights:

- 9.3.1 to reject all or any of the Supplies and require the Supplier to credit SAGE with the price of the Supplies;
- 9.3.2 to require the Supplier to promptly replace or repair the Supplies free of all cost and at the Suppliers risk.

9.4 The warranty rights under this clause shall be assignable to SAGE, or for the benefit of its customer or the ultimate end-user of the Supplies, for a period of at least twelve (12) months from the actual date of delivery.

## 10. INDEMNITIES

10.1 The Supplier shall indemnify SAGE, its affiliates and any of their officers, employees, agents and contractors, against any liability, damages, costs, loss, expense and damage of any nature whatsoever arising from Supplier's negligence, breach of duty, breach of statute or otherwise, which is caused by or arises from:

- 10.1.1 The performance by the Supplier of the Order;
- 10.1.2 The design, manufacture, sale, use or possession of the Supplies;
- 10.1.3 Any infringement, breach or misuse of any patent, copyright, trademark, registered design or other industrial or intellectual property; or
- 10.1.4 Any failure to conform to or comply with the requirements of the Order.

## 11. INTELLECTUAL PROPERTY

11.1 The Supplier indemnifies SAGE against any claim or action made or constituted against SAGE relating to any loss, injury or damage caused by or any infringement of copyright, registered and unregistered trademarks, registered designs, trade secrets, know-how, data, invention, work or patent perpetrated by the Supplier in connection with the Supplies.

11.2 Where the design, specifications or data for Supplies is furnished by SAGE all intellectual property rights, including copyright or design rights, in any work produced by the Supplier in the course of providing the Supplies pursuant to this Order shall be and remain the property of SAGE. Otherwise any intellectual property rights in the Supplies shall remain vested in the Supplier.

11.3 Any improvements or modifications made to any design, specification or data provided by SAGE pursuant to the order shall automatically be assigned to SAGE. The Supplier grants SAGE a non-exclusive, royalty-free licence to use any intellectual property contained or referred to in any of the Supplies that it provides to SAGE pursuant to this Order.

11.4 In the event that the Supplier is unable to or unwilling to continue to complete the Order, and the Order is terminated, the Supplier shall deliver to SAGE all necessary drawings, designs and information to enable SAGE to source the Supplies elsewhere, and shall grant SAGE a royalty-free licence for that purpose.

## 12. TERMINATION

12.1 The Order may be terminated for convenience by SAGE at any time in whole or part by giving written notice of termination to the Supplier. In the event of such notice being given the Supplier shall stop work forthwith and shall comply with any directions with regard to the Supplies which may be given by SAGE.

- 12.2 The Supplier shall submit within one (1) month from the effective date of termination the Suppliers termination claim. SAGE shall pay a fair and reasonable price to the Supplier in respect of any commitments, liabilities, or expenditure reasonably and properly incurred by the Supplier in connection with the Order and which otherwise represent an unavoidable loss to the Supplier. SAGE shall not be liable to pay any sum which, when taken together with any other sum or sums paid or due to the Supplier under the Order, shall exceed the total price of the Supplies the subject of the said notice of termination.
- 12.3 If the Supplier defaults on any of its obligation under the Order, SAGE shall have the right to terminate all or part of the Order by written notice without prejudice to any other of its rights or remedies, and shall be liable only for Supplies delivered and accepted by SAGE.
- 12.4 If the Supplier becomes insolvent or has a receiver or administrator appointed in respect of its business or any of its assets or is compulsory or voluntarily wound up, then SAGE shall have the right to terminate the Order by written notice without prejudice to any right or remedies, and shall be liable only for Supplies delivered and accepted by SAGE.
- 12.5 No termination of the Order shall prejudice any rights or obligations of either party hereunder or at law. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.

### 13. SUBCONTRACTS

The Supplier shall not subcontract any of the work, nor assign any of its rights or obligations hereunder, without first obtaining the written consent of SAGE. SAGE's consent shall not relieve the Supplier of any of its duties, liabilities or obligations under this Order.

### 14. SECURITY OF PAYMENT ACT

#### 14.1 Interpretation:

- 14.1.1 Subcontractor: means any party engaged by or on behalf of:
- 14.1.1.1 the Supplier; or
  - 14.1.1.2 a contractor of the Supplier (including at any subcontract level), to carry out work which forms part of the Supplies or supply goods and services related to the Supplies;
- 14.1.2 Clause 14 will apply to the extent that the Security of Payment Act applies.
- 14.1.3 To the extent permitted by and for the purposes of the Security of Payment Act the 'reference dates' are those dates the Supplies have been delivered in accordance with these conditions and the Supplier has served a valid tax invoice that satisfies the requirements of clause 6.2, 6.3 and 6.4.

#### 14.2 Notices:

Notwithstanding anything else in these conditions, the Supplier must:

- 14.2.1 Ensure that, within 24 hours after any notice is given or received under the Security of Payment Act by the Supplier to, or from, any of its Subcontractors in relation to the Supplies, a copy of that notice is given to SAGE;
- 14.2.2 Despite paragraph 14.2.1., immediately notify SAGE if it becomes aware that a Subcontractor intends to exercise a statutory lien under the Security of Payment Act over any unfixed plant and materials supplied by the Subcontractor for use in connection with the carrying out work forming part of the Supplies; and
- 14.2.3 Ensure that any subcontract or any arrangement that the Supplier has with a Subcontractor contains clauses equivalent to the terms of this clause 14.2, so as to enable the Supplier to comply with its obligations under this clause 14.2.

#### 14.3 Payment:

14.3.1 To the extent permitted by law, the Supplier's entitlement to be paid by SAGE for any amount stated in a payment claim submitted by the Supplier, is conditional upon the Supplier first providing SAGE with a valid tax invoice for the approved amount that satisfies the requirements of clause 6.2, 6.3 and 6.4.

14.3.2 Payment of moneys for which SAGE has become liable to pay the Supplier by reason of the Security of Payment Act shall not be evidence of the value of the Supplies, an admission of liability or evidence that the Supplies have been completed satisfactorily, but shall be payment on account only.

14.3.3 If SAGE becomes aware that a Subcontractor is or is likely to become entitled to:

14.3.3.1 Suspend work or the supply of related goods and services (forming part of the Supplies) under the Security of Payment Act; or

14.3.3.2 Exercise a statutory lien under the Security of Payment Act over any unfixed plant and materials supplied by the Subcontractor for use in connection with the carrying out work forming part of the Supplies,

SAGE may at its absolute discretion, pay the Subcontractor such money that is or may be owing under the Security of Payment Act to the Subcontractor in respect of the work or the supply of related goods and services forming part of the Supplies. Any such amount paid by SAGE is recoverable from the Supplier as a debt due and payable to SAGE and SAGE may set off that amount from money otherwise payable to the Supplier.

#### 14.4 Indemnities:

The Supplier must indemnify SAGE from and against any claim, demand, action, suit or proceeding and all damages, losses (including financial losses), expenses or costs (including legal costs on a full indemnity basis) suffered or incurred by SAGE arising out of and in connection with:

14.4.1 A suspension by a Subcontractor of work or the supply of related goods and services (which forms part of the Supplies) under the Security of Payment Act;

14.4.2 A Subcontractor exercising a statutory lien under the Security of Payment Act over unfixed plant and materials supplied by the Subcontractor for use in connection with the carrying out work or the supply of related goods and services forming part of the Supplies;

14.4.3 A failure by the Supplier to comply with any of its obligations under paragraph 14.2;

14.4.4 A failure by the Contractor to pay any Subcontractor; or

14.4.5 SAGE exercising its rights under paragraph 14.3.3.

#### 14.5 Authorised Nominating Authority:

Upon an adjudication application under the Security of Payment Act, the parties acknowledge and agree that the Supplier shall choose the "Institute of Arbitrators and Mediators" to be the authorised nominating authority for the purposes of the Security of Payment Act.

## 15. APPLICABLE LAW

These conditions shall be governed by the laws which are applicable to the State in which the Supplies are delivered as shown on the Order.