



STANDARD TERMS AND CONDITIONS			
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## STANDARD TERMS AND CONDITIONS OF CONTRACT FOR PURCHASE OF GOODS AND SERVICES

### 1. GENERAL

- 1.1 These Sundale Ltd. Standard Terms and Conditions of Contract for Purchase of Goods and Services (Terms and Conditions) are the standard terms and conditions referred to in the Purchase Order.
- 1.2 These Terms and Conditions apply to any contract entered into by Sundale Ltd. and the Supplier, whether as an offer or acceptance of an offer, to provide the Goods and Services.
- 1.3 Subject to clause 2.1, these Terms and Conditions will prevail in any conflict between them and the terms of offer or acceptance by the Supplier.

### 2. SPECIAL TERMS AND CONDITIONS

- 2.1 Where any Special Terms and Conditions are included and they are inconsistent with these Terms and Conditions, the Special Terms and Conditions will prevail to the extent of the inconsistency.

### 3. INTERPRETATION

- 3.1 In these Terms and Conditions:

'**Contract**' means the contract formed between Sundale Ltd. and the Supplier including any Special Terms and Conditions;

'**Goods**' means the goods specified in the Purchase Order;

'**Intellectual Property Rights**' means all intellectual property rights, including copyright, patents, trademarks, designs, trade secrets, inventions, know-how, copyright, rights in circuit layouts and confidential information, any application for any of the foregoing rights and any rights of a similar nature;

'**Material**' means any material brought into existence as part of, or for the purpose of manufacturing the Goods or performing the Services and includes but is not limited to documents, equipment, information or data stored by any means;

'**Moral Rights**' means the right of attribution of authorship of work, the right not to have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth);

'**Purchase Order**' means the document used by Sundale Ltd. to purchase goods and services and which refers to Sundale Ltd.'s standard terms and conditions;

'**Request**' means a request for the supply of goods and services under a Purchase Order that is covered by these Terms and Conditions;

'**Services**' means the services specified in the Purchase Order;

'**Special Terms and Conditions**' means any terms and conditions specified in the Purchase Order; and

'**Supplier**' means the individual or corporation to whom the Purchase Order is addressed.

### 4. DELIVERY

- 4.1 Goods and Services must be delivered at the time, place and in the manner specified in the Purchase Order or by Sundale Ltd.

### 5. INCLUSIVE PRICE

- 5.1 The price specified in the Purchase Order includes:
  - a) all taxes, duties and other imposts for which the Supplier is liable;
  - b) all amounts payable for the use (whether in the course of manufacture or usage of the Goods or performance of the Services) of patents, copyrights, registered designs, trade marks and other Intellectual Property Rights; and
  - c) all charges for supply of Goods or performance of Services.

### 6. PROVISION OF GOODS AND SERVICES

- 6.1 **Free from defect.** The Supplier must ensure the Goods supplied are free from defects in materials and workmanship and are at least of merchantable quality and fit for their purpose.
- 6.2 **Standard of Services.** The Supplier must perform the Services at a high standard with all due skill, care and diligence and ensure all Services are free from defects in performance, meet their purpose and are complete.
- 6.3 **Rejection of Goods and Services.** Sundale Ltd. may at any time prior to acceptance reject any Goods and Services found not to be in accordance with the Contract.
- 6.4 **Latent defects.** After receiving the Goods and Services, Sundale Ltd. may reject the Goods and Services for any non-conformity with the Contract which could not have been discovered by reasonable inspection before receipt.
- 6.5 **No payment for rejected Goods and Services.** Sundale Ltd. will not be liable to pay for any rejected Goods and Services or for any damage done to or arising from inspection or rejection of the Goods and Services.
- 6.6 **Replacement, refund or repair.** If Sundale Ltd. rejects any Goods and Services, the Supplier must, at Sundale Ltd.'s option, without prejudice to Sundale Ltd.'s rights otherwise arising under the Contract or the general law:
  - a) replace, without further cost to Sundale Ltd., the rejected Goods and Services with Goods and Services that comply with the Contract;
  - b) refund all payments related to the rejected Goods and Services; or
  - c) repair the Goods on site or otherwise to the satisfaction of Sundale Ltd.,
 and, in the case of (a) or (b), remove the rejected Goods at the Supplier's expense.
- 6.7 **Approval of samples.** If Sundale Ltd. requires the Supplier to submit samples of the Goods and Services, the Supplier must not proceed to bulk manufacture the Goods or fully develop the Services until Sundale Ltd. has approved the samples.
- 6.8 **Inspection.** Without additional cost to Sundale Ltd., and upon being sent reasonable notice from Sundale Ltd. in

**INFORMATION:** This process may be varied, withdrawn or replaced at any time. Printed copies of this process or part thereof are regarded as uncontrolled and should not be relied upon as a current reference document. It is the responsibility of the Sundale team member printing the process to always refer to the Accreditation Portal for the latest version. Compliance to this process is mandatory and team members are to ensure that they read this process in conjunction with the latest version of relevant policies and procedures.

writing, the Supplier must provide reasonable access to premises, including the premises of approved sub-contractors, and all other necessary assistance for Sundale Ltd.'s representatives to inspect the manufacture of the Goods or the performance of the Services.

- 6.9 **Receipt of Goods and/or Services.** Notwithstanding clause 11 of this Contract, receipt of the Goods and Services by Sundale Ltd. will not under any circumstances be deemed to be acceptance of those Goods and Services by Sundale Ltd.

### 7. ACCEPTANCE

- 7.1 The performance of this Contract is deemed to be acceptance of the Terms and Conditions.

### 8. VARIATIONS

- 8.1 No agreement or understanding varying the Terms and Conditions is legally binding upon the Supplier or Sundale Ltd. unless in writing and signed by the Supplier and Sundale Ltd.
- 8.2 No agreement or understanding varying or extending the Purchase Order is legally binding until Sundale Ltd. issues an amended Purchase Order confirming the variation.

### 9. PAYMENT

- 9.1 Sundale Ltd. will pay the Supplier within 30 days of the end of the month after the later of acceptance of the Goods, satisfactory completion of the Services and receipt of a correctly rendered invoice.
- 9.2 A correctly rendered invoice means an invoice that:
- is addressed in accordance with the Purchase Order;
  - identifies the Purchase Order number;
  - is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
  - is, if GST is applicable, a valid tax invoice in accordance with GST legislation; and
- where Sundale Ltd. is satisfied with the Goods and Services.
- 9.3 The Supplier acknowledges that Sundale Ltd.'s method of payment is by electronic funds transfer directly to the Supplier's bank account unless an arrangement to pay by cheque is agreed in writing by Sundale Ltd. and the Supplier.
- 9.4 The Supplier must provide Sundale Ltd. with the Supplier's bank account for payment with respect to the Purchase Order.
- 9.5 The Supplier must notify Sundale Ltd. of a change of the Supplier's bank account no later than 14 days before a payment by Sundale Ltd. is due (the **Cut-off-Date**). Sundale Ltd. is not liable to make any additional or interim payments to the Supplier if details of the Supplier's bank account are incorrectly notified by the Supplier or notified after the Cut-off-Date.
- 9.6 Sundale Ltd. must provide a remittance advice to the Supplier when Sundale Ltd. instructs its bank to make an electronic funds transfer or when Sundale Ltd. makes a cheque payable to the Supplier.
- 9.7 Sundale Ltd. is only required to pay interest if the amount of interest exceeds \$10, the Supplier has issued a correctly rendered invoice for the interest and all other T&C's have been met.

### 10. INDEMNITY

- 10.1 The Supplier indemnifies Sundale Ltd. against all loss, damage, expense or legal costs arising in respect of any action or claim for alleged infringement of any Intellectual Property Rights or any misuse or unauthorised disclosure of personal information whether arising under the *Privacy Act 1988* (Cth) or otherwise, by reason of the purchase, possession or use of the Goods and Services.

### 11. PASSING OF PROPERTY

- 11.1 Subject to clauses 6.3, 6.4 and 6.5, property in and risk of loss or damage to the Goods and Services pass to Sundale Ltd. upon delivery to Sundale Ltd.

### 12. WARRANTY

- 12.1 If Sundale Ltd. gives the Supplier prompt notice of any defect or omission discovered in the Goods and Services during any warranty period applicable to the Goods and Services, the Supplier must correct that defect or omission without delay and at no cost to Sundale Ltd.
- 12.2 The Supplier must meet all costs of an occurrence incidental to the discharge of warranty obligations, including any packing, freight, disassembly and re-assembly costs.

### 13. ASSIGNMENT AND SUB-CONTRACTING

- 13.1 The Supplier must not, without prior consent in writing from Sundale Ltd.:
- assign the Supplier's rights under the Contract; or
  - sub-contract the whole or any part of the manufacture or supply of the Goods or performance of the Services.
- 13.2 The Supplier must on request provide Sundale Ltd. with the names of any of the Supplier's sub-contractors. The Supplier agrees, and must ensure that any sub-contractor agrees, that Sundale Ltd. may disclose the sub-contractor's name publicly.
- 13.3 The Supplier is liable to Sundale Ltd. for the acts and omissions of any sub-contractors as if those were the acts or omissions of the Supplier.

### 14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 This Contract does not assign the Intellectual Property Rights of either party existing at the date of the Purchase Order.
- 14.2 Intellectual Property Rights in Material brought into existence as part of, or for the purposes of, performing the Services vests in Sundale Ltd. The Supplier grants, or must obtain for, Sundale Ltd. a perpetual, world wide, royalty free licence (including a right to sublicense) to use, reproduce, adapt, modify and communicate any other material provided to Sundale Ltd. under the Contract.

### 15. MORAL RIGHTS

- 15.1 To the extent permitted by laws and for the benefit of Sundale Ltd., the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by Sundale Ltd. of Material even if the use may otherwise be an infringement of their Moral Rights.

### 16. CONFIDENTIAL INFORMATION

- 16.1 Sundale Ltd. may at any time require the Supplier to give, and require the Supplier to arrange for its employees, agents or sub-contractors to give, a written undertaking in a form acceptable to Sundale Ltd. relating to the use and non-disclosure of Sundale Ltd.'s confidential information.

### 17. PROTECTION OF PERSONAL INFORMATION

- 17.1 In relation to personal information obtained during the course of providing the Goods and Services under the Contract, the Supplier must:
- use or disclose the personal information only for the purposes of the Contract;
  - not do any act or engage in any practice that would breach an Information Privacy Principle or National Privacy Principle under the *Privacy Act 1988* (Cth);
  - immediately notify Sundale Ltd. if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause 17.
- 17.2 The Supplier must ensure that any sub-contract entered into by the Supplier for the purpose of fulfilling its obligations under the Contract imposes on the sub-contractor the same obligations that the Supplier has under

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this clause 17 (including this requirement in relation to sub-contracts).

### 18. TERMINATION FOR CONVENIENCE

- 18.1 Without prejudice to any other rights and remedies it has under the Contract or otherwise, Sundale Ltd. may, at any time, by written notice to the Supplier, terminate the Contract.
- 18.2 If the Contract is terminated under clause 18.1, Sundale Ltd. is liable only for:
- payments under clause 9 for accepted Goods or Services provided in accordance with the Contract before the effective date of termination; and
  - reasonable costs actually incurred by the Supplier and directly attributable to the termination.
- 18.3 Sundale Ltd. is not liable to pay compensation under clause 18.2 for an amount which would, in addition to any amounts paid or due, or becoming due, to the Supplier under the Contract, exceed the total amount payable for the Goods and Services under the Contract.
- 18.4 The Supplier is not entitled to compensation for loss of prospective profits.

### 19. TERMINATION FOR DEFAULT

- 19.1 If the Supplier:
- fails to deliver the Goods or perform the Services by the date specified in the Contract;
  - breaches a provision of the Contract where that breach is not capable of remedy;
  - breaches any provision of the Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
  - being an individual, makes any arrangement, assignment, composition or agreement for the benefit of his or her creditors under the *Bankruptcy Act 1966* (Cth) as amended, or a creditor's petition is filed with an Australian Court seeking a sequestration order against his or her estate; or
  - being a corporation, comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth), or an order has been made for the purpose of placing the corporation under external administration, or an application is filed with an Australian Court seeking the appointment of a liquidator, receiver or other external administrator,
- Sundale Ltd. may, without prejudice to any other rights and remedies it has under the Contract or otherwise, terminate the Contract in whole or in part by notice in writing to the Supplier.
- 19.2 On termination Sundale Ltd. may:
- cease all payments under the Contract;
  - recover from the Supplier all sums paid for unperformed Services, undelivered Goods, defective Goods or Goods and Services which are not in accordance with the Contract; and
  - purchase similar Goods and Services from alternative suppliers and claim by way of indemnity from the Supplier any loss Sundale Ltd. may incur in doing so.

### 20. SECURITY

- 20.1 The Supplier must ensure that any material and property (including security-related devices and clearances) provided by Sundale Ltd. for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction might reasonably be inferred from the circumstances.

### 21. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 21.1 This Contract does not create a relationship of employment, agency or partnership between the Supplier and Sundale Ltd.

### 22. COMPLIANCE WITH LAWS

- 22.1 The Supplier must ensure, in carrying out the Contract that it and any sub-contractor approved under this Contract comply with all relevant laws.

### 23. APPLICABLE LAW

- 23.1 This Contract is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Queensland.

### 24. INSURANCE

- 24.1 The Supplier must have and maintain insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply of the Goods and Services, including, as applicable, product liability insurance, public liability and professional indemnity insurance.
- 24.2 The Supplier must provide evidence of such insurance upon request by Sundale Ltd.

### 25. WORK HEALTH & SAFETY

- 25.1 The Supplier must comply with the provisions of the Work Health and Safety Act 2011 and Regulations. The Supplier must also ensure that any service or work provided or conducted is in accordance with the latest Legislation, Regulations, Codes of Practice and Sundale Ltd. Policies and Procedures.
- 25.2 The Supplier must provide a signed returned copy of the end page within the WHS Contractors Induction Handbook to acknowledge receipt and understanding of WHS requirements, where requested by Sundale Ltd.

<b>Signed by (name of person):</b>	
<b>Signature of Person:</b>	
<b>Date Signed:</b>	____/____/____

Please return signed copy to:

Sundale Ltd.  
Attention: Procurement Officer  
35 Doolan Street  
PO Box 5202 SCMC  
NAMBOUR QLD 4560

*This is the end of the Terms and Conditions.*

Date Received by Sundale stamp:
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