

SERVICES PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

The following words will, unless the context otherwise requires, have the following meanings:

"Contractor" means the person, firm or corporation to whom the Purchase Order is addressed.

"GST" means tax imposed under the GST Act.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cmlth) and all associated legislation and regulations.

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

"Principal" means the company named on the face of the Purchase Order as the Principal.

"Purchase Order" means the purchase order form on the back of which these terms and conditions are printed.

"Recipient", **"Supplier"**, **"Tax Invoice"**, **"Taxable Supply"**, **"Value"** each bear the same meaning as that in the GST Act.

"Services" means the services the subject of the Purchase Order.

"Terms" means these terms and conditions.

2. ENTIRE TERMS

2.1 Subject to any Supply Agreement between the Principal and the Contractor relating to the Services which Supply Agreement (if any) is referred to in the Purchase Order, when properly signed by or for and on behalf of the Principal, the Purchase Order together with all documents attached to it or incorporated by reference in it (including these Terms) constitute the entire agreement between the Principal and the Contractor for the supply of the Services and will supersede all conditions contained in the Contractor's estimate or tender and apply to the exclusion of any terms incorporated in any invoice or other document provided by the Contractor. No terms or conditions stated by the Contractor in accepting or acknowledging the Purchase Order will be binding on the Principal unless accepted in writing by the Principal.

2.2 Subject to clause 2.1 above, these Terms will stand as the standard terms of trade between the Principal and the Contractor until these Terms are replaced or amended by written notice by the Principal to the Contractor. If any purchase order is issued by the Principal to the Contractor subsequent to the Purchase Order to which these Terms accompany and the relevant purchase order is not

accompanied by terms and conditions of its own, these Terms will apply to that Purchase Order.

3. AGENCY

Unless expressly stated in the Purchase Order, the Contractor will act as an independent contractor and not as an agent or employee of the Principal and the Contractor must not hold itself out as an agent of the Principal.

4. ASSIGNMENT

The Contractor must not assign the Purchase Order or any part of it without the Principal's prior written consent.

5. SUB-CONTRACTING

The Contractor must not sub-contract the performance of any of its obligations under the Purchase Order without the prior written permission of the Principal. If the Principal permits subcontracting the acts and omissions of the subcontractor will be taken to be the acts and omissions of the Contractor. The Contractor's responsibilities and liabilities under the Purchase Order shall not be diminished or otherwise affected by the permitted subcontracting. The Principal may withdraw its permission to sub-contract at any time and without penalty.

6. CORRESPONDENCE AND DOCUMENTATION

All correspondence must be in the English language. The order number shown on the face of the Purchase Order must be shown on all documents including, but not limited to, invoices and other communications. All documentation and correspondence must be transmitted to the Principal's address specified in the Purchase Order.

7. QUALITY

7.1 The Services delivered by the Contractor must comply:

- (a) precisely in quality, specification and description with the Purchase Order and any plans or specifications provided or nominated by the Principal;
- (b) to any legally applicable standards and comply with all relevant legislation.

7.2 The Principal will not pay for any services supplied or performed which are not the subject of the Purchase Order.

7.3 The Contractor must supply and perform the Services ordered conscientiously, diligently, faithfully, promptly, efficiently and in accordance with the highest standards prevailing in the industry to which the Services relate.

7.4 Unless otherwise specified in the Purchase Order, the Contractor must make available and provide all of the personnel, plant and equipment that are necessary for the complete supply and performance of the Services.

8. REJECTION OF SERVICES

Where the Services supplied do not comply with clause 7.1, the Principal may by notice in writing to the Contractor reject the Services in question and require that they be made good within a period stated in the notice. In that case the Contractor must make good the rejected Services to the satisfaction of the Principal within the period stated in the

notice. If the work of making good is not commenced at the beginning of that period or is not completed by the end of that period, the Principal may have the work carried out by others at the Contractor's expense, but without prejudice to any other rights which the Principal may have against the Contractor with respect to the Services not complying with clause 7.1, and the cost of the work incurred by the Principal shall be a debt due and payable by the Contractor to the Principal.

9. COMPLETION

- 9.1 The Contractor must inform the Principal when it has finished supplying or performing the Service. The Contractor will be taken to have completed the supply or performance of a Service upon the acceptance of the supply or performance of the Service by the Principal.
- 9.2 The Principal will be taken to have accepted the supply or performance of the Service if it:
- (a) informs the Contractor of its acceptance; or
 - (b) does not give a notice to the Contractor pursuant to clause 8 within (7) days of the Contractor informing the Principal that it has finished supplying or performing the Service.
- 9.3 The acceptance or deemed acceptance by the Principal of the supply or performance of the Service will be without prejudice to the Principal's right at a later time to claim that there has been a breach by the Contractor of any of the terms or conditions applicable to the Purchase Order.

10. PAYMENT

- 10.1 Unless otherwise provided in the Purchase Order, the terms of payment are as follows:
- (a) The Contractor will invoice the Principal for payment on one of the following basis as nominated in the Purchase Order:
 - (i) monthly for Services completed in the preceding month calculated at the rates stated in the Purchase Order;
 - (ii) as soon as practicable after and in any event within (7) days of completion of all the Services ordered in the Purchase Order calculated at the rates or being the amount stated in the Purchase Order;
 - (iii) where the Purchase Order specifies a lump sum consideration for the Services, monthly on a progress payment basis against the lump sum in an amount equal to the proportion of that lump sum which is the same as the proportion of the Services completed to the end of the preceding month less all progress payments previously made.
- If the Purchase Order makes no provision for the basis of payment, then the basis set out in clause 10.1(a)(ii) will apply.
- (b) Invoices must:
 - (i) be in a form approved by the Principal;
 - (ii) show the Purchase Order number;

- (iii) show the amount due to the Contractor in Australian Dollars;
 - (iv) show the date of completion of the Services to which the invoice relates;
 - (v) contain a description of the Services completed;
 - (vi) where they include the reimbursement of expenses, have attached to them all the appropriate documentation verifying such expenses; and
 - (vii) be a valid Tax Invoice if the supply of the Services is a Taxable Supply.
- (c) Payment will be made by the Principal by the end of the second month following the month in which the Principal receives the Contractor's invoice complying with the requirements of clause 10.1(b), provided the Services have been accepted by the Principal and nothing is in dispute. Payment will be made by electronic fund transfer or cheque. Any settlement or other discounts applicable will be deducted from the amount due to the Contractor.
- (d) The Principal may withhold payment, without loss of settlement or other discounts if the Contractor's invoice does not comply with clause 10.1(b) or there is any error in or omission from the relevant invoice.
- (e) Periods applying to discounts will run from the date the Principal receives a correct invoice complying with clause 10.1(b).

10.2 Where the terms of payment are specified in the Purchase Order, payments will be made in accordance with those terms.

11. PRICE

11.1 Unless otherwise provided in the Purchase Order, the rates or other amounts for the Services stated in the Purchase Order:

- (a) are firm and are not subject to escalation;
- (b) include all costs of supplying the Services, at or to the location nominated on the Purchase Order (including the cost of travel and accommodation of the contractor's personnel where these costs are not shown separately);
- (c) subject to clause 11.1(d), unless separately stated on the Purchase Order, include all taxes and duties connected with the supply of the Services; and
- (d) if the supply of the Services is a Taxable Supply are exclusive of any GST.

12. GST

12.1 Unless expressly stated to the contrary in the Purchase Order, any amount that may be payable under this document is exclusive of any GST. If the Supplier makes a Taxable Supply in connection with this document, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

12.2 A party's right to payment is subject to a valid Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

13. TIME

13.1 Time is the essence of the Contractor's obligations. The Contractor must supply and perform the Services specified in the Purchase Order within the time(s) stated in the Purchase Order. Extension of time may be granted at the sole discretion of the Principal. If an extension of time in respect of the Purchase Order is granted by the Principal, time will remain of the essence in respect of the extended time. If the Contractor is unable to complete the Services within the time stipulated in the Purchase Order or within any extension of time granted by the Principal, the Principal will, unless the delay results from the Principal's own act or omission, be at liberty either :

- (a) to cancel the Purchase Order without prejudice to any right or remedy which has accrued or may thereafter accrue to the Principal; or
- (b) engage another person to complete the Services or part of the Services; and
- (c) the Principal may deduct from amounts payable to the Contractor all expenses incurred over and above those which would have been incurred had the supply or performance of the Services not been delayed.

14. TERMINATION FOR DEFAULT

14.1 If the Contractor breaches any of the terms or conditions applicable to the Purchase Order (including any of the Contractor's warranties), the Principal may at its option and without prejudice to any of its other rights cancel the Purchase Order in respect of any unperformed Services. The Contractor shall not be entitled to any payment if the Purchase Order is cancelled under this clause 14 except for payment in respect of the Services which have been performed.

14.2 If the Contractor petitions for bankruptcy, makes an arrangement with its creditors generally, enters or seeks to enter into a personal insolvency agreement under Part X of the Bankruptcy Act 1966, is adjudged bankrupt, or in the case of a company, becomes an "externally-administered body corporate" as that term is defined in the Corporations Act 2001; or if the Contractor does not correct or, if immediate correction is not possible, commence and diligently continue action to correct any default of the Contractor to comply with any of the terms or conditions applicable to the Purchase Order within fourteen (14) days after being notified in writing of the default by the Principal, the Principal may, by written notice to the Contractor, without prejudice to any other rights or remedies which the Principal may have, terminate any further performance by the Contractor of the Purchase Order. If such termination occurs, the Principal may complete the performance of the Purchase Order by such means as the Principal selects and the Contractor will be responsible for any additional cost incurred by the Principal in so doing. Any amounts due to the Contractor for Services supplied by the Contractor prior to such termination will be subject to offset of the Principal's additional costs of completing the Purchase Order and other damages incurred by the Principal as a result of the Contractor's default.

14.3 In the case of a default by the Contractor the Principal may select either of the remedies in clauses 14.1 and 14.2 each of which remedies is in addition to and not in substitution for any other remedy available at law or in equity.

15. WAIVER

No waiver of any breach of any term or condition applicable to the Purchase Order will constitute a waiver of any other breach of that term or condition or of any other term or condition.

16. WARRANTY

16.1 The Contractor represents and warrants that :

- (a) it is qualified by training and experience and has the skills and resources to supply the Services;
- (b) it will supply and perform the Services conscientiously, diligently, faithfully, promptly, efficiently and in accordance with the highest standards prevailing in the industry to which the Services relate; and
- (c) the Services supplied will comply:
 - (i) precisely in quality, specification and description with the Purchase Order and any plans or specifications provided or nominated by the Principal;
 - (ii) to any legally applicable standards and comply with all relevant legislation.

17. INTELLECTUAL PROPERTY

17.1 The Contractor warrants to the Principal and its successors in title that the Services provided to the Principal will not infringe or contribute to the infringement of Intellectual Property Rights of any third party whether in Australia or in any other country.

17.2 The Contractor will, at its own expense, indemnify, hold harmless and defend the Principal and its successors in title against any claim, suit or proceeding brought against the Principal which is based upon a claim, whether rightful or otherwise that any Services, process or material or any part thereof supplied in connection with the Services under any Purchase Order, constitutes an infringement of any Intellectual Property Rights of any party and the Contractor will pay all damages and costs awarded against the Principal resulting there from.

17.3 If a court rules that the Services or any part thereof, its process or any material or part of any material supplied by the Contractor in the course of provision of the Services infringes the Intellectual Property Rights of any party or if an injunction is granted prohibiting their use, the Contractor will at its expense, subject to the following provisions either procure for the Principal an irrevocable royalty-free and unrestricted licence to continue using such service, process or material or any part thereof or with the Principal's prior written approval, replace the tainted services, process or material with substantially equal but non-infringing items or modify them so that they become non-infringing, provided that no replacement or modification will in any way amend or relieve the Principal of its warranties and guarantees set forth in or applicable to the Purchase Order.

17.4 This indemnity is given upon the condition that the Principal promptly notifies the Contractor of any claim or proceeding involving the Principal in which an infringement of Intellectual Property Rights is alleged, and the Principal must permit the Contractor to control the defence or compromise of any allegation of infringement and the Principal must render reasonable assistance at the Contractor's cost, in the defence thereof as the Contractor may require.

Intellectual Property Obtained Through The Services

- 17.5 The Contractor acknowledge that it is a fundamental term of the Purchase Order that any improvements, alterations, adaptation, refinements and variations to any Intellectual Property derived through the provision of the Services to the Principal which may be invented, developed or otherwise derived by the Contractor or any of the Contractor's employees, officers and agents (collectively "the Developments") shall remain the property of the Principal.
- 17.6 The Contractor will or will procure that its employees, officers and agents do all things and where necessary, execute or produce all documents to assign the Developments to the Principal and to perfect the legal title of the Principal thereto at the option and cost of the Principal.

18. INJURY AND INSURANCES

- 18.1 It is the Contractor's responsibility to ensure that all appropriate insurances are in place to an appropriate level prior to the commencement of the supply of the Services.
- 18.2 The Contractor must before the commencement of the supply of the Services have the following mandatory insurances covering the Contractor, its employees or agents and any necessary equipment:
- (a) Public liability insurance for a sum not less than \$20 million in respect of any single event or accident or such higher amount as the Principal acting reasonably and prudently, may from time to time require with a reputable insurance company;
 - (b) Workers compensation insurance as required by the relevant state, territory or commonwealth legislation;
 - (c) Where necessary, product liability insurance for an amount appropriate given the type of the product supplied or to be supply in respect of the Services;
 - (d) Where necessary third party motor vehicle insurance.
- 18.3 The Contractor must provide to the Principal copies of its policies of insurance (including the application, policy and schedule) as and when required by the Principal.
- 18.4 If the Contractor or any employee or agent of the Contractor enters upon any premises or property of the Principal or its agents, clients or customers in order to perform the Services including but not limited to delivery, construction, inspection, servicing or repairing, the Contractor will indemnify and hold harmless the Principal from and against all liability, actions, suits, claims and demands on account of personal injury including death or property loss or damage to others (including the Contractor and employees, agents and invitees of the Contractor and of the Principal) arising out of or in any manner connected with the performance of such Services and caused by the negligent or wilful act or omission of the Contractor or an employee or agent of the Contractor and the Contractor will at its own expense defend any and all actions based thereon and will pay all legal costs and other costs and expenses arising therefrom.
- 18.5 The Contractor must also procure and carry the insurance of employees on such work that may be required by law. The Contractor must procure and maintain such other insurance in connection with the Services as the Principal may specify.

19. PASSING OF PROPERTY AND RETENTION OF OWNERSHIP

- 19.1 The Contractor acknowledges that any right, title and interest it has or may have in any materials, goods, plant and/or equipment provided by the Contractor and forming a part of the Services will be wholly transferred or assigned from the Contractor to the Principal in its entirety:
- (a) in the case of materials, goods, plant and/or equipment delivered to the premises or property of the Principal, upon their delivery to the premises or property of the Principal or upon payment by the Principal to the Contractor whichever first occurs; and
 - (b) in the case of materials, goods, plant and/or equipment situated off or away from the premises or property of the Principal, upon payment by the Principal to the Contractor, even though such materials, goods, plant or equipment may require further machining, fabrication, processing, maintenance, assemblage or any other value-added process by the Contractor or any third party but without prejudice to the Contractor's entitlement to be paid in accordance with the Purchase Order.
- 19.2 The Contractor shall on demand provide reasonable access to and make available for collection any materials, goods, plant or equipment which is the property of the Principal.
- 19.3 Where any payment is made by the Principal to the Contractor in relation to goods or services that have not yet been supplied or not yet supplied in full, the Contractor will hold the entirety of those payments on separate and distinct account as bare trustee for the Principal. Such trust will end only upon delivery in full and acceptance by the Principal, of all goods and services to which the payments relate; at which time the payments will become the property of the Contractor.

20. SUPPLY WARRANTIES

The Contractor shall obtain for the benefit of the Principal all third party warranties and performance guarantees as are required by the Purchase Order or as are available from suppliers and subcontractors in respect of the Services or materials, goods and equipment provided by the Contractor as necessary to the supply of the Services. The Contractor shall provide the Principal with the documents evidencing all such warranties and performance guarantees.

21. GOVERNING LAW

Unless otherwise provided in the Purchase Order, the laws of the jurisdiction from which the Principal issues the Purchase Order govern the Purchase Order, and each party submits to the jurisdiction of the courts of that jurisdiction and the courts which may hear appeals from the courts of that jurisdiction.

22. ON SITE WORK

- 22.1 Where the Contractor is required to undertake any work on any premises or property of the Principal or its agents, clients or customers, the Contractor must ensure that all work is performed in a safe manner so as to protect all persons and property and the environment, and ensure that all persons engaged in that work at all times adopt and maintain a high standard of safe working practices which meets State or Territory OHS Regulations and observe the Principal's or its agent's, client's or customer's standard conditions for on-site work, a copy of which will be given to the Contractor before entering the relevant premises or property.

22.2 Without limiting clause 22.1 the Contractor must ensure that,

- (a) all of the Contractor's personnel, whilst on the relevant premises or property, wear all appropriate personal protective equipment and comply at all times with all applicable Occupational Health and Safety requirements and the Principal's directions or instructions (which may be given by the Principal or on its behalf) from time to time regarding health or safety matters: and
- (b) all plant, tools and equipment used to deliver the Services are maintained in a safe, good and sound condition capable of performing the function for which they are intended; and
- (c) all of the Contractor's personnel are fully aware of and abide by the Principal's requirements from time to time relating to the protection of the environment (including flora and fauna) at the relevant premises or property.

22.3 If a breach occurs of any of clauses 22.1 and 22.2, the Principal may refuse entry to the relevant premises or property to the person concerned or require that the person concerned to immediately leave the relevant premises or property. The Contractor's obligations shall not be diminished, reduced or otherwise affected and the Contractor shall not be entitled to any compensation because any person is refused entry to the relevant premises or property or is required to leave the relevant premises or property.

22.4 The Principal shall at all times have full free and unlimited access to any premises or property of the Principal or its agents, clients or customers, including any areas upon which the Contractor may be supplying and performing the Services. The Contractor must supply and perform the Services in such a manner as to ensure that no blockage or closure is caused upon any road or path either by its vehicles or equipment or by any excavations or any associated materials.

23. DEFECTS LIABILITY PERIOD

23.1 The Principal may, within three (3) months of completion of the Services direct the Contractor to rectify any defects or omissions in the Services existing on the completion of the Services or which becomes apparent prior to the expiration of three (3) months of completion of the Services. The direction must identify the defect or omission and state the date by which the Contractor must complete the work of rectification and may state a date on which the work of rectification must commence.

23.2 The Contractor must at its costs and expense:

- (a) on the date stated in the direction (if any) or otherwise as soon as possible after receiving the direction referred to in clause 23.1 commence the work of rectification;
- (b) carry out the work of rectification in all respect as if it were part of the Services; and
- (c) on the date stated in the direction, complete the work of rectification.

23.3 The work of rectification will be subject to a separate defect liability period, being the period set out in clause 23.1 read as if "completion of the Services" were "completion of the work of rectification" and this clause 23 will apply to the work of rectification.

23.4 If the work of rectification is not commenced or completed by the stated dates or does not comply with clause 23.2(b), the Principal may have the work carried out by others at the Contractor's expense, but without prejudice to any other rights which the Principal may have against the Contractor, and the cost incurred by the Principal in doing so shall be a debt due and payable by the Contractor to the Principal.

23.5 The Principal's rights under this clause are in addition to any other rights that it may have under this document, law or equity.

24. CONFLICT OF INTEREST

The Contractor must not engage in any activity that would in any way adversely affect the Contractor's ability to supply and perform the Services in an independent and reliable manner. The Contractor will not accept any payment, gift or favour from any person in relation to the supply and performance of the Services unless the Contractor first obtains the Principal's consent.

THIS IS THE END OF THE PURCHASE ORDER CONDITIONS SERVICES

Acknowledgement by the Parties

The Contractor warrants that it has read and understood the terms and conditions above and accepts such terms and conditions for the provision of the Services.

The Contractor further warrants that it has full power and authority to enter into the supply and performance of the Services and to bind the Contractor to the contract with the Principal.

SIGNED BY THE CONTRACTOR _____ **DATE** ____/____/____

FULL NAME: _____

ACCEPTED BY, FOR AND ON BEHALF OF THE PRINCIPAL

UNIPOD Pty Ltd
2-10 Distribution Drive.
Truganina, Victoria, 3029

SIGNED BY THE PRINCIPAL _____ **DATE** ____/____/____

FULL NAME: _____