



STANDARD TERMS AND CONDITIONS

1 TERMS AND APPLICATION

This Agreement sets out the terms and conditions on which Supplier will supply the Goods and Services to SWMS. The engagement of Supplier is non-exclusive. SWMS is not under any obligation to acquire Goods and Services that attract a minimum level of charges or to pay any minimum fee to Supplier pursuant to this Agreement.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Agreement, the following definitions apply:

- (1) **Agreement** means these Standard Terms and Conditions and includes the relevant Purchase Order.
- (2) **Claim** includes any claim, action, demand or proceedings for any Loss or payment of money (including damage) under, or arising out of, or in connection with this Agreement or the supply of the Goods and Services.
- (3) **Confidential Information** means—
 - (a) all business, technical, personal information and other information, records, documents and other material of SWMS that is not in the public domain or which has been designated as confidential by SWMS;
 - (b) all of SWMS's Intellectual Property; and
 - (c) any information arising out of the provision of this Agreement that is not in the public domain other than through a breach of an obligation of confidence owed to SWMS.
- (4) **Consequential Loss** includes any direct, or indirect, loss of profit or revenues, loss of production, loss of opportunity, loss by reason of full (or partial) shutdown or non-operation, increased cost of borrowing capital or financing, or loss of use, whether caused, or contributed to, by a breach of contract or statute, breach of warranty (express or implied), tort, strict liability, or any other cause whatsoever.
- (5) **Defect or Defective** means any part, or aspect, of the Goods and Services that do not strictly comply with SWMS's requirements, the specifications of the Goods and Services, relevant standards and legislative requirements, the quote or proposal provided by Supplier.
- (6) **Goods and Services** means the items detailed in the accompanying Purchase Order, whether they are goods, materials, services or a combination of the aforementioned.
- (7) **Insolvency Event** in relation to an entity means anything that reasonably indicates that there is a significant risk that that entity is, or will become, unable to pay its debts as they fall due.
- (8) **Intellectual Property** means any, and all, rights in respect of, or in connection with, any intellectual property (including copyrights, patents, trademarks, designs, brand names, logos, circuit layouts, know-how and methodology) whether subsisting or in the future, and includes any right to apply for the registration, renewals and extensions of licences of any intellectual property.
- (9) **Loss** includes any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential (including Consequential Loss), present or future, fixed or unascertained, actual or contingent, and whether arising in contract, equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), tort (including breach of statutory duty) to the maximum extent possible, tort (including for negligence or negligent misrepresentation), or otherwise (including restitution).
- (10) **Purchase Order** means the purchase order that SWMS has provided to Supplier for the supply of the Goods and Services with an individual purchase order number.
- (11) **Supplier** means you, being the supplier detailed in, and recipient of, the Purchase Order.
- (12) **SWMS** means Sirius Well Manufacturing Services Australia Pty Ltd (ABN 69 155 833 551) and each related body corporate of SWMS.
- (13) **Tax Invoice** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (14) **Taxable Supply** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (15) **Warranty Period** means the longer of the following periods:
 - (a) the warranty period provided by Supplier in relation to the Good and Services; or
 - (b) twelve (12) months from SWMS's receipt of the Goods and Services.

2.2 Unless the context otherwise requires, this Agreement must be interpreted in accordance with the following:

- (1) headings are for convenience only and do not affect the interpretation of this Agreement;
- (2) the singular includes the plural and vice versa, and words importing a gender include the other gender;
- (3) other grammatical forms of defined words, or expressions, have corresponding meanings;
- (4) a legislative provision, legislation (including subordinate legislation) includes a reference to that provision or legislation as amended, re-enacted or replaced;
- (5) "A\$", "\$A", "dollar", "\$" or "AUD" is a reference to the Australian currency, unless otherwise stated;
- (6) words, and expressions, importing natural persons include partnerships, bodies corporate, association, governments, and governmental authorities and agencies;
- (7) the words "include", "includes" and "including" means "including without limitation";
- (8) if an example is given of anything in this Agreement (including a right, obligation or concept) by using "such as", "for example" or other similar phrases, the example does not limit the scope of that thing;

3 SUPPLY STANDARDS

3.1 Supplier must provide the Goods and Services –

- (1) in strict accordance with the terms of this Agreement;
- (2) promptly, carefully and to the highest possible standards applicable in Australia;
- (3) exercising all due care, skill and judgment in an efficient, professional and cost effective manner, and in accordance with accepted professional, business and/or industry practices; and
- (4) in accordance with directions given by SWMS, including any specifications provided with the Purchase Order.

3.2 Time is of the essence in relation to all of Supplier's obligation set out in this Agreement.

3.3 Supplier must hold all authorisations, permits and licences, and comply with all laws applying to the supply of the Goods and Services.

3.4 Notwithstanding any other provision in this Agreement and without limitation, SWMS may, from time to time, direct Supplier to vary the supply of the Goods and Services. The parties, acting in good faith, may agree on revised rates for the supply of the Goods and Services.

3.5 Supplier must immediately notify SWMS, in writing, after becoming aware of anything that may, or will, delay the supply of the Goods and Services, or result in Supplier not being able to meet a deadline or other timeframe. SWMS may, in addition to any other rights it may have and at its discretion, either grant Supplier an extension of time to supply the Goods and Services, or engage a third party to supply the Goods and Services.

4 WARRANTIES

4.1 Supplier warrants that the Goods and Services will—

- (1) conform precisely in quality and specification with the requirements of this Agreement and with the applicable specifications for the Goods and Services;
- (2) be new and of merchantable quality (if applicable);
- (3) be free from Defects in composition, materials and workmanship;
- (4) be fit for purpose;
- (5) be free of any liens, charges or encumbrances; and
- (6) be available for SWMS's complete, and uninterrupted, possession of the Goods and Services.

5 INVOICING AND PAYMENTS

5.1 SWMS must pay Supplier for the supply of the Goods and Services.

5.2 Supplier must submit to SWMS a valid Tax Invoice within five (5) business days of delivery, or completion, of the Goods and Services.

5.3 Subject to receipt of a valid Tax Invoice, SWMS must pay Supplier the invoiced amount within thirty (30) days of receipt of the valid Tax Invoice into Supplier's nominated bank account.



STANDARD TERMS AND CONDITIONS

- 5.4 SWMS may withhold payment of any amount that it disputes in good faith until the dispute has been resolved. SWMS must pay the undisputed part of the Tax Invoice within the time specified in clause 5.3.
- 5.5 If an error is discovered by Supplier in the amount payable under a Tax Invoice, Supplier must immediately notify SWMS of the error and issue a revised Tax Invoice.
- 5.6 If a Tax Invoice is found to have been incorrectly rendered after payment—
- (1) any overpayment will be immediately repaid by Supplier to SWMS, or at the election of SWMS, offset against any subsequent Tax Invoice; and
 - (2) any underpayment will be immediately invoiced by Supplier to SWMS with payment due, and payable, within five (5) business days from the date of the new Tax Invoice, or at the election of Supplier, added into a subsequent Tax Invoice.
- 5.7 SWMS may deduct from moneys due, or otherwise payable, to Supplier any moneys—
- (1) claimed by SWMS from Supplier;
 - (2) payable by Supplier; or
 - (3) that may become payable by Supplier,
- under, or in connection with, the Goods and Services.

6 TAXES

Supplier must pay any royalty, tax, penalty (including late penalties), excise, levy, rate or charge imposed by the Commonwealth of Australia, the State of Queensland or any other authority with authority from a relevant law to impose an obligation that is directly, or indirectly, payable in respect of the Goods and Services.

7 INTELLECTUAL PROPERTY

- 7.1 Each party acknowledges that each party—
- (1) retains ownership of its Intellectual Property that a party owns, or has the right to use, when the Goods and Services are supplied, including Intellectual Property created independent of this Agreement which a party makes available for the purposes of the supply of the Goods and Services; and
 - (2) grants the other party a non-exclusive, worldwide, royalty free licence to that party's intellectual property to the extent necessary to enable the other party to carry out its obligations under this Agreement.

8 CONFIDENTIALITY

- 8.1 Where Supplier receives Confidential Information from SWMS in connection with the supply of the Goods and Services, Supplier must—
- (1) keep the Confidential Information confidential and not use, disclose or reproduce the Confidential Information for any purpose other than for the supply of the Goods and Services, and may only disclose same to its employees only on an as needs basis; and
 - (2) establish, and maintain, effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.
- 8.2 Supplier acknowledges, and agrees, that in addition to any other remedies available at law or in equity, SWMS may seek specific performance, or injunctive relief, against any breach, or threatened breach, of this clause 8.

9 TITLE AND RISK

- 9.1 Risk in the Goods and Services supplied by Supplier passes to SWMS upon full, and complete, delivery of the Goods and Services.
- 9.2 Title in the Goods and Services supplied by Supplier passes to SWMS upon full payment of the Tax Invoice rendered by Supplier.
- 9.3 If, prior to delivery, title in the Goods and Services passes to SWMS, Supplier must set the relevant Goods and Services aside and clearly mark them (if possible) as being the property of SWMS in a manner reasonably required by SWMS.

10 INDEMNITIES

- 10.1 Except to the extent caused, or contributed to, by the gross negligence or wilful misconduct by SWMS, Supplier—
- (1) will be responsible for; and
 - (2) must save, indemnify, defend and hold SWMS harmless from and against, all Claims and Losses arising out of, or in connection with, the Goods and Services.
- 10.2 This clause 10 survives termination, or expiry, of this Agreement.
- 11 TERMINATION**
- 11.1 SWMS may terminate this Agreement at its convenience by giving Supplier with 30 days' written notice of the termination.
- 11.2 If SWMS terminates this Agreement, SWMS must pay Supplier any costs properly, and reasonably, incurred by Supplier up to, and including, the date of the termination, provided that the Supplier is not required to supply any Goods and Services following receipt of the notice of termination.
- 11.3 Supplier will not be entitled to any other Claims against SWMS upon termination of this Agreement.
- 11.4 If this Agreement is terminated for any reason, clauses 4 (Warranties), 7 (Intellectual Property), 8 (Confidentiality), 9 (Title and Risk), 10 (Indemnities) and 11 (Termination) survive and each party retains their rights under those clauses.
- 11.5 Termination of this Agreement—
- (1) does not affect any accrued rights, or remedies, of either party; and
 - (2) for the avoidance of doubt, is without prejudice to any rights, or remedies, that the party terminating this Agreement may have in respect of, or arising out of, such termination.

12 GENERAL

- 12.1 Any notice, consent, information, application or request that must, or may, be given, or made, to a party under this Agreement must be given, or made, in writing. This Agreement may only be altered by agreement in writing signed by both parties.
- 12.2 This Agreement represents the entire agreement between the parties and supersedes any previous representations, understandings or agreements between the parties, including any prior conditions, warranties or indemnities, whether recorded in writing or otherwise. For avoidance of doubt, any terms and conditions submitted by Supplier for the Goods and Services will not be enforceable and is superseded by this Agreement.
- 12.3 The relationship between the parties is that of principal and independent contractor. Supplier must not represent itself as an agent, representative or partner of SWMS in any circumstance. Neither party has any power, or authority, to act for, or to bind, the other party.
- 12.4 Supplier must not assign, or novate, this Agreement or any right under this Agreement unless Supplier obtains prior consent from SWMS, which must not be unreasonably withheld.
- 12.5 A clause of this Agreement will not be interpreted in a way which is prejudicial to a party as a consequence of that party being responsible for the drafting of that clause.
- 12.6 A party's failure, or delay, to exercise a power, or right, under this Agreement does not operate as a waiver of that power or right. A party does not waive its rights under this Agreement because it grants an extension of time to the other party. Waiver of a power, or a right, is not effective unless it is in writing, and is only effective in respect of the specific instance to which it relates and for the specific purpose for which it is given. Waiver of a power, or right, in that instance will not affect the party's right to exercise other powers, or rights, in this Agreement.
- 12.7 This Agreement is governed by, and construed in accordance with, the laws of Queensland, Australia. Each party unconditionally, and irrevocably, accepts the jurisdiction of the courts of Queensland, Australia in relation to any legal proceedings arising in connection with this Agreement.