

SYC Ltd – Terms of Trade

These Terms of Trade (**Terms**) apply to and govern all contracts entered into by SYC Ltd (ABN 27 167 737 144) (**SYC**) for the supply of Goods and/or Services by any person or legal entity to SYC (or an individual nominated by SYC) pursuant to SYC's 'jobactive' contract with the Commonwealth government (**Supplier**). Any Supplier who agrees to supply Goods and/or Services to SYC will be deemed to accept these Terms to the exclusion of all other terms.

1. Terms of Trade

1.1 Contract documents

The following documents form the agreement under which the Supplier will provide the Goods and Services to SYC:

- (a) these Terms; and
- (b) a Purchase Order,

(together, **Agreement**), and to the extent of any inconsistency between these Terms and a Purchase Order (or any other documentation or correspondence between SYC and the Supplier), these Terms will prevail.

1.2 Supplier's standard terms

Except to the extent otherwise provided for in these Terms, the Agreement overrides and operates to the exclusion of the Supplier's standard terms and conditions of supply, sale, service, warranty or technical support.

2. Ordering Goods and Services

2.1 Purchase Order

SYC may order Goods and/or Services from time to time, pursuant to a written order (**Purchase Order**) which may specify:

- (a) the date of the order and the order number (if applicable);
- (b) a description of the Goods and/or Services required (including the beneficiary of the Goods and/or Services);
- (c) the applicable Price;
- (d) the Delivery Date for the Goods and/or Services (if any); and
- (e) the Site for delivery of the Goods and/or performance of the Services.

2.2 No minimum order requirement

Unless otherwise set out in a Purchase Order, SYC will not be bound to any minimum order requirement in relation to the Goods and/or Services.

2.3 Acceptance of Purchase Order

The Supplier must:

- (a) use its best endeavours to supply the Goods and/or Services to SYC in accordance with the applicable Purchase Order; and
- (b) notify the Supplier if it is unable to fulfil a Purchaser Order in writing, within 2 Business Days of the date of the Purchase Order.

3. Supply of Goods and Services

The Supplier warrants that:

- (a) it has the necessary skills and experience to supply the Goods and perform the Services properly and in compliance with the Agreement;
- (b) no Goods, Services or Deliverables will infringe the Intellectual Property Rights of any person;
- (c) all Goods, Services and Deliverables will:
 - (i) be of acceptable quality, be fit for the purpose for which they are intended to be used and comply with any requirements notified by SYC;

- (ii) comply with all applicable laws and regulations and industry codes of conduct;
 - (iii) be delivered in accordance with the applicable Delivery Date; and
 - (iv) comply with all descriptions (including any technical or performance specifications or any safety requirements) set out in a Purchase Order or otherwise represented by the Supplier;
- (d) all Goods and Deliverables will be:
- (i) new and not previously used; and
 - (ii) supplied with complete, up-to-date and accurate documentation suitable to use and operate the Goods and/or Deliverables;
- (e) it will provide the Services professionally, carefully, skilfully and competently, in a timely and efficient manner and in accordance with best practice in the Supplier's industry; and
- (f) the Supplier will maintain and provide suitably skilled and qualified personnel, and all other resources required to enable the Supplier to meet its obligations under the Agreement;
- (g) the Supplier will ensure that its personnel maintain all licences, permits, clearances and other qualifications that they are required under any law to have and maintain;
- (h) (where relevant to the provision of the Services) the Supplier will ensure that the Supplier and its personnel:
- (i) comply with all SYC's security, occupational health and safety, environmental and other policies and procedures made known to the Supplier;
 - (ii) comply with all reasonable directions of the authorised representatives of SYC; and
 - (iii) do not interfere with any of SYC's activities, or the activities of any other person located at the Site;
- (i) the Supplier will not represent or hold out that it is an agent of SYC or that it has authority to act, or to make any commitment on behalf of SYC, or allow any personnel to do so;
- (j) as at the date of any Purchase Order, there are no actions, claims or legal proceedings, actual or threatened, that would or may materially hinder or prevent the Supplier from making good its warranties or otherwise performing its obligations under the Agreement; and
- (k) it will immediately notify SYC if it becomes aware of any fact, circumstance or thing that is inconsistent with any of the warranties in this clause 3.

4. Delivery

4.1 Delivery

- (a) The Supplier must deliver the Goods and/or perform the Services specified in any Purchase Order by the Delivery Date.
- (b) The Supplier acknowledges and agrees that:
 - (i) on-time delivery of the Goods and/or Services is of material importance to SYC, and undertakes not to interrupt, delay, abandon or withhold delivery of Goods or provision of Services for any reason, including but not limited to a dispute between the parties; and

- (ii) if the Supplier fails to meet the Delivery Date, for any reason, SYC may cancel the Purchase Order either in whole or in part without penalty.
- (c) The Supplier will be responsible for arranging transportation of the Goods to the Site specified in the Purchase Order (at its cost), and must ensure that the Goods are protected against all damage and deterioration during transportation.
- (d) Services must be performed at the Site specified in the Purchase Order and the Supplier acknowledges that Services may be performed for the benefit of an individual nominated in the Purchase Order.

4.2 Title and risk

- (a) Title to and risk in the Goods and/or Services pass to SYC upon delivery in accordance with clause 4.1(a).
- (b) If the Supplier delivers Goods or Deliverables in excess of the amount specified in a Purchase Order, SYC will hold them at the Supplier's risk.
- (c) The Supplier warrants that it is the owner of the Goods or Deliverables free from any liens, charges and encumbrances and will provide the Goods and Deliverables on that basis and SYC (or the beneficiary of the Goods or Deliverables) will be entitled to clear, complete and quiet possession of the Goods and any Deliverables.

5. Defective Goods or Services

5.1 Acceptance and rejection of Goods or Services

- (a) SYC, acting reasonably, may reject any Goods, Services and/or Deliverables that it considers to be Defective.
- (b) SYC must inform the Supplier of any Defective Goods or Services as soon as reasonably practicable after becoming aware.
- (c) Notwithstanding clause 4.2(a), Defective Goods are held by SYC at the Supplier's risk.

5.2 Defects

The Supplier is liable for all Defective Goods or Services. If the Supplier is notified of a Defective Good(s) or Defective Service(s), then without prejudice to any other right or remedy available to SYC under the Agreement or at law, the Supplier must at the election of SYC immediately either:

- (a) replace the Defective Good(s) with Goods that comply with the terms of the Agreement;
- (b) re-perform the Defective Service(s) so that the Services comply with the terms of the Agreement; or
- (c) cancel any invoice that requests payment for Defective Good(s) or Defective Service(s) or issue a refund for any Defective Good(s) or Defective Service(s) already paid for (whichever is applicable).

6. Prices and payment

- (a) SYC will pay the Price to the Supplier.
- (b) Unless otherwise agreed in writing by SYC, the Price is inclusive of all of the Supplier's costs and expenses, including the costs of labour, facilities, products, insurance, taxes and other out of pocket expenses.
- (c) The Supplier must issue a correctly rendered tax invoice to SYC no later than 30 calendar days after the date that the Goods and/or Services are supplied. A correctly rendered invoice must quote the order number specified in the applicable Purchase Order, in addition to the Supplier's name and ABN.
- (d) The Supplier agrees and acknowledges:

- (i) SYC is party to a government contract which imposes a strict timeframe on the processing of invoices by SYC in order to secure payment, after which time payment is forfeited;
- (ii) accordingly, time is of the essence in issuing invoices to SYC; and
- (iii) the Supplier will forfeit its right to payment for the Goods and/or Services if a correctly rendered invoice is not issued in accordance with clause 6(c).
- (e) Subject to clause 6(f), SYC will pay the full amount of each correctly rendered invoice within 30 calendar days of the date of the invoice.
- (f) If SYC disputes any invoice rendered to it by the Supplier:
 - (i) SYC will pay the undisputed part of the relevant invoice to the Supplier (if any); and
 - (ii) if the resolution of the dispute determines that SYC is to pay the balance or any other amount, SYC will pay that amount as soon as practicable after resolution of that dispute.
- (g) If requested, the Supplier must provide SYC with written records that enable SYC to calculate and/or verify the accuracy of any invoice submitted under this clause 6.
- (h) Payment of an invoice does not constitute acknowledgement by SYC that the Goods and/or Services covered by the invoice were rendered in compliance with the Agreement.
- (i) Any amounts recoverable by SYC from the Supplier under the Agreement may be set off against or deducted from any amounts due to the Supplier under the Agreement.

7. Goods and services tax

7.1 Consideration does not include GST

Unless specifically described in a Purchase Order as 'GST inclusive', the Price does not include any amount on account of GST.

7.2 Gross up of consideration

Where any supply to be made by the Supplier under the Agreement is subject to GST:

- (a) the consideration payable or to be provided for that supply but for the application of this clause (**GST Exclusive Consideration**) shall be increased by, and SYC shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- (b) SYC must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.

7.3 Reimbursements

If any payment to be made to a party under or in accordance with the Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 7.2.

7.4 Tax invoices

Notwithstanding any other provision of the Agreement, SYC need not make any payment for a taxable supply made by the Supplier under or in accordance with the Agreement until the Supplier has given SYC a tax invoice in respect of that taxable supply.

7.5 Interpretation

A word or expression used in this clause which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 7.

8. Indemnity

8.1 Indemnity by Supplier

The Supplier agrees at all times to indemnify SYC against all Losses that SYC may sustain or incur as a result, directly or indirectly, of:

- (a) the provision of, or omission or failure to provide, or error or defect in, the Goods and/or Services;
- (b) any breach of the Agreement by the Supplier (including, but not limited to, a breach in respect of which SYC exercises an express right to terminate a Purchase Order);
- (c) any wilful, unlawful or negligent act or omission of the Supplier or its directors, officers, employees, agents and subcontractors;
- (d) any loss of or damage to any property or injury to or death of any person caused or contributed to by the Supplier or its personnel; or
- (e) any claims that the use of the Goods, Deliverables, or any outcome of the Services infringes the Intellectual Property Rights of any person.

8.2 Liability of SYC

SYC will not be liable to the Supplier or any other party for direct or indirect loss in connection with the provision of the Goods and/or Services or the Agreement.

9. Insurance

- (a) The Supplier must at all times maintain sufficient insurance with a reputable insurance company, that covers all risks that reasonable person carrying on the business of the Supplier would be likely to insure against.
- (b) The Supplier must provide to SYC within 14 days of a request, a certificate of currency and a statement of insurance, including the date of the policy, for any of the policies held by the Supplier.

10. Termination

10.1 Immediate termination by SYC

SYC may, by notice in writing, immediately terminate any Purchase Order in whole or in part, at any time if the Supplier:

- (a) commits a breach of the Agreement that is incapable of being remedied;
- (b) commits a breach of the Agreement that is capable of being remedied but remains unremedied for 10 Business Days after SYC has given notice of the breach to the Supplier; or
- (c) suffers an Insolvency Event.

10.2 SYC's additional right of termination

SYC may terminate a Purchase Order in whole or in part, at any time, by giving 14 days' notice in writing to the Supplier. SYC shall not be liable for any loss or damage whatsoever arising from such termination.

10.3 Notification of Insolvency Event

If either party suffers an Insolvency Event, it must immediately give written notice of that event to the other party.

11. Notices

11.1 Service of notices

A notice, demand, consent, approval or communication under the Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile or email to the recipient's address for Notices as specified in a Purchase Order, or as varied by any Notice given by the recipient to the sender.

11.2 Effective on receipt

A Notice given in accordance with clause 11.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by email, at the time and date which the sender's email system records that the email was successfully delivered to the recipient;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within one Business Day after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

12. General

- (a) Each party must do or cause to be done all things necessary or desirable to give effect to the Agreement.
- (b) SYC may vary these Terms from time to time by written notice to you.
- (c) Any indemnity under these Terms is independent and survives termination of these Terms. Any other term by its nature intended to survive termination of these Terms survives termination.
- (d) The relationship between the parties is that of independent contractors, and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association.
- (e) The Supplier must not assign, transfer, subcontract or otherwise deal with its rights and obligations under the Agreement, except with SYC's prior written consent.
- (f) If any provision of these Terms is invalid, void, illegal or unenforceable, it may be severed from these Terms and the remaining provisions shall continue in force.
- (g) The failure of SYC to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect SYC's right to subsequently enforce that provision.
- (h) These Terms are governed by the law applicable in the State of South Australia, Australia, and each party submits to the jurisdiction of the courts of that State.

13. Defined terms & interpretation

13.1 Defined terms

In these Terms:

Business Day means a day other than a Saturday, Sunday or public holiday in South Australia.

Defective means any Goods, Services or Deliverables that are not of acceptable quality, are unfit for purpose, do not comply with any specifications agreed in a Purchase Order, do not comply with the requirements of the Agreement or are otherwise rejected by the beneficiary of the Goods and/or Services for any of these reasons.

Deliverables means any document, software, work product or other deliverable provided or required to be provided as part of the Services.

Delivery Date means the date that by which Goods must be delivered and/or Services must be performed in full, as specified in a Purchase Order.

Goods and/or Services means the goods and/or services described in a Purchase Order. **Goods** and **Services** has the corresponding meaning.

Insolvency Event means any insolvency-related event that is suffered by a party, including without limitation where:

- (a) the party ceases to carry on business;
- (b) the party ceases to be able to pay its debts as they become due;
- (c) the party disposes of the whole or any substantial part of its assets, operations or business (other than in the case of a solvent reconstruction or reorganisation);
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business;
- (e) any step is taken to enter into any arrangement between the party and its creditors (other than in the case of a solvent reconstruction or reorganisation); or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, or other like person of the whole or part of the party's assets, operation or business.

Intellectual Property Rights means all intellectual property rights, including without limitation:

- (a) patents, copyright, registered designs, registered and unregistered trade marks, circuit layout rights, know-how, trade secrets, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above.

Losses means liabilities, losses, damages, expenses and costs (including, but not limited to legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature whether arising in contract or tort (including negligence) or under a statute, including, but not limited to:

- (a) loss of anticipated profits, revenue, savings, loss of opportunity, pure economic loss and loss of data;
- (b) any other consequential, special or indirect loss or damage.

Price means the price specified in a Purchase Order for the Goods and/or Services pursuant to the Supplier's current price list at the time the Purchase Order is placed (or as otherwise agreed between the parties in writing).

Site means the place to which the Supplier must deliver the Goods and/or Services as set out in a Purchase Order.

13.2 Interpretation

In these Terms, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these Terms, and a reference to these Terms includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a party is to a party to these Terms, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for preparation of the agreement or any part of it.