



Terms and Conditions for Suppliers



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1. Definitions

In these Conditions:

Conditions	means these standard terms and conditions for Suppliers.
Confidential Information	means the terms of the Contract and any information relating to either party's business, clients, operations, finances, plans or customers which is disclosed to the other party but does not include information which is: <ul style="list-style-type: none"> (a) or becomes public knowledge other than by a breach of this Contract; or (b) in the possession of the other party without restriction on its disclosure.
Contract	means the Conditions and the Order which together make up the contract between Nukon and the Supplier.
Force Majeure Event	means a riot, act of terrorism, war, invasion, civil war, rebellion, earthquake, tsunami, cyclone, flood, fire, explosion or other natural physical disaster (but excluding any other less severe weather conditions), ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste.
GST	GST has the meaning defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
Heavy Vehicle	the meaning defined in the Heavy Vehicle National Laws.
Nukon	means Nukon Pty Ltd ABN 50 613 300 762.
Order	means the purchase order issued by Nukon to the Supplier.
Supplier	means the person or company with whom the Order is placed.
Supplies	means all goods and/or services identified in the Order.
Supply Chain	means the Supplier's direct and indirect subcontractors, service providers and suppliers.

2. APPLICATION

- 2.1 The Supplier agrees to supply the Supplies to Nukon in accordance with the Contract.
- 2.2 The Contract constitutes the agreement between Nukon and the Supplier with respect to the Supplies to the exclusion of any terms and conditions issued by the Supplier. The Contract shall not be amended unless expressly agreed in writing by both parties.

- 2.3 Nukon's Order number, where applicable, must be quoted by the Supplier on all documents and correspondence relating to the Supplies.

3. PRECEDENCE

The Order may include additional or special terms relating to the Supplies. Where such terms are included in the Order, the following order of precedence shall apply to the extent of any inconsistency:

- 3.1 the terms in the Order; and
- 3.2 these Conditions.

4. DELIVERY, DELAY AND EXTENSIONS OF TIME

- 4.1 The Supplies shall be provided at or delivered to the location/s identified in the Order by no later than the date or dates specified in the Order. Time is of the essence in relation to the provision or delivery of the Supplies.
- 4.2 The Supplier shall pack the Supplies in a manner which is suitable for the designated mode of transport, which will prevent loss or damage and, if a Heavy Vehicle is being used to transport the Supplies, in accordance with the Heavy Vehicle National Laws.
- 4.3 The Supplier must inform Nukon in writing of any anticipated or actual delay in delivering or providing the Supplies within two business days of the event giving rise to the delay occurring.
- 4.4 Subject to the Supplier's compliance with clause 4.3, if the Supplier is delayed in providing or delivering the Supplies by a breach of Contract by Nukon or by a Force Majeure Event, the Supplier may make a written request to Nukon for an extension of time to the date for delivery specified in the Order.
- 4.5 In order to ensure that Nukon is in a position to meet its obligations to its customers, any application for an extension of time under clause 4.4 must be made by the Supplier within 2 business days of the notice of delay issued in accordance with clause 4.3.
- 4.6 Subject to the Supplier's compliance with clauses 4.3 to 4.5, Nukon will grant the Supplier an extension of time to the date for delivery equivalent to the length of the delay caused by an event specified in clause 4.4.
- 4.7 If a rate for liquidated damages is specified in the Order, then liquidated damages shall be payable by the Supplier at the rate identified in the Order for each day that the Supplier fails to complete the provision or delivery of the Supplies by the date specified in the Order (or any other date for completion directed by Nukon in accordance with clause 4.6).
- 4.8 If the Supplies are not completed or delivered by the date(s) specified in the Order (or any other date directed by Nukon in accordance with clause 4.6), Nukon shall be entitled:
- (a) to return to the Supplier, at the Supplier's 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 Nukon for such Supplies; and

- (b) to recover from the Supplier any additional expenditure reasonably incurred by Nukon in obtaining other equivalent supplies in replacement to the extent that such expenditure is more than the moneys paid by Nukon for such Supplies.

4.9 The Supplier must comply with, and ensure its agents and subcontractors comply with, all relevant legislation, all reasonable directions given by Nukon in relation to access to Nukon's or its client's premises and all applicable Nukon and Nukon client policies and procedures.

5. WARRANTIES

5.1 The Supplier warrants that the Supplies will:

- (a) be fit for purpose;
- (b) be free from defects in design, materials and workmanship; and
- (c) comply with Australian Standards and any specifications specified in the Order or otherwise by Nukon agreed in writing between the parties.

5.2 If the Supplies do not conform with the quantity, quality or specification stated in the Order, or do not meet the required standards of design, materials or workmanship, Nukon shall be entitled to exercise any of the following rights:

- (a) to reject all or any of the Supplies and require the Supplier to credit Nukon with the price of the Supplies; or
- (b) to require the Supplier to promptly replace or repair the Supplies at no cost to Nukon.

5.3 The warranties given by the Supplier under this clause 5 shall apply for a period of 12 months from completion of delivery or provision of the Supplies unless a different warranty period is specified in the Order.

6. RISK AND TITLE

6.1 Subject to clause 6.2, risk and title to the Supplies shall pass to Nukon upon delivery, but without prejudice to any right of rejection Nukon may have.

6.2 Any Supplies which are defective, damaged or do not comply with the Contract may be rejected by Nukon and returned to the Supplier, at the Supplier's expense. Risk and title in any rejected Supplies remains with the Supplier.

7. PRICE AND PAYMENT

7.1 The price specified in the Order is fixed and is not subject to rise and fall. The price is inclusive of all taxes (excluding GST), duties, packaging and delivery charges for the Supplies to the destination specified in the Order.

7.2 The Supplier shall submit an invoice to Nukon by email to accounts.payable@gotosage.com in the month following delivery of the Supplies or at such other times specified in the Order.

- 7.3 All invoices must include the Order number, clearly identify the Supplies included in the invoice and any GST component.
- 7.4 Invoices will be paid by Nukon within 45 days of the end of the month in which the invoice is received or within such other timeframe as specified in the Order.
- 7.5 Neither party may offset any amount they owe against an amount owed by the other party under this Contract.
- 7.6 Nukon may withhold payment for any part of the Supplies that it disputes in good faith until the dispute has been resolved but may not withhold payment for any undisputed portions of the Supplies.

8. CONFIDENTIALITY

- 8.1 Subject to clause 8.2, neither party may, without the prior written approval of the other party, disclose Confidential Information other than as strictly necessary for the purpose of fulfilling its obligations under this Contract.
- 8.2 The obligation not to disclose Confidential Information without the other party's prior written approval, does not apply to any disclosure that is:
 - (a) required by law; or
 - (b) made to a party's legal advisers, accountants or auditors.
- 8.3 If a party requests that the other party return or destroy any Confidential Information in its possession, the other party shall be entitled to retain one copy of documents which contain Confidential Information to enable it to comply with its record keeping obligations.

9. INSURANCE

The Supplier and Nukon agree, at all times during the term, to maintain insurances in respect of such risks that a reasonable, prudent person carrying on its business would be likely to insure against with reputable insurers, In the case of the Supplier, these insurances will include:

- (a) public and product liability insurance covering liability to any third party for death or bodily injury (including illness) and loss of and damage to property arising out of anything done or omitted to be done by the Supplier, in the amount of at least \$20 million per occurrence;
- (b) workers compensation insurance covering liability to employees of the Supplier under the laws of their place of employment; and
- (c) such other insurance as specified in the Order.

10. INDEMNITIES

- 10.1 Each Party (**Indemnifying Party**) shall indemnify the other party, its related entities and their officers, employees and contractors (the "**Indemnified Parties**"), against any liability, damage, costs, loss,

expense or claim, of any nature whatsoever, made against or incurred by an Indemnified Party arising from the Supplier's negligence, breach of contract, breach of statute or otherwise, in connection with:

- (a) the design, manufacture, supply, sale, delivery or use of the Supplies; and
- (b) any failure of the Supplies to comply with the requirements of the Contract.

10.2 The Supplier's liability to indemnify the Indemnified Parties shall be reduced proportionately to the extent that Nukon caused or contributed to the liability, damage, cost, loss, expense or claim.

11. INTELLECTUAL PROPERTY

11.1 The Supplier indemnifies Nukon against any claim made or action commenced against Nukon in relation to an alleged infringement of a third party's intellectual property rights arising from the use of the Supplies except where such claim arises as a result of specific instructions provided by Nukon.

11.2 Nukon indemnifies the Supplier against any claim made or action commenced against the Supplier in relation to an alleged infringement of a third party's intellectual property rights arising from the use of the design, specifications or data for the Supplies provided by Nukon.

11.3 Where the design, specifications or data for the Supplies is provided by Nukon, ownership of all intellectual property rights in any work produced by the Supplier in the course of providing the Supplies shall be assigned by the Supplier to, and vests upon creation in, Nukon.

11.4 The intellectual property rights in any improvements or modifications to any design, specification or data provided by Nukon shall be assigned by the Supplier to, and vests upon creation in, Nukon.

11.5 The Supplier grants Nukon a non-exclusive, royalty-free and transferrable licence to use any background or third party intellectual property contained in the Supplies.

12. TERMINATION

12.1 Nukon may terminate the Contract for its convenience at any time upon giving the Supplier five business days written notice of termination.

12.2 Within one month of the date of termination, the Supplier shall submit a claim for payment of any Supplies provided prior to the date of termination and, in the event of termination under clause 12.1, any reasonable stranded costs (being labour and other reasonable expenses) the Supplier may have in respect of the Supplies. Nukon's liability to pay the Supplier in the event of a termination in accordance with clause 12.1 shall not exceed the total price specified in the Order.

12.3 If either party breaches a material obligation under the Contract, the other party shall have the right to terminate all or part of the Contract by written notice to the breaching party and without prejudice to any other of its rights or remedies.

12.4 If the Supplier is compulsory or voluntarily wound up, then Nukon shall have the right to terminate the Contract by written notice and without prejudice to any accrued rights or remedies.

12.5 No termination of the Contract shall prejudice any rights or obligations of either party. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.

13. SUBCONTRACTS AND ASSIGNMENT

- 13.1 The Supplier shall not subcontract any part of the provision of the Supplies without the prior written consent of Nukon. Nukon's consent shall not relieve the Supplier of any of its liabilities or obligations under the Contract.
- 13.2 Neither party may assign any of its rights or obligations under the Contract without the prior written consent of the other party.

14. VARIATIONS

- 14.1 Nukon may direct the Supplier to undertake a variation to the Supplies. Upon receipt of a direction to vary the Supplies, the Supplier shall advise Nukon of the effect that the variation will have on the timeframe for the delivery of the Supplies and provide an estimate of the cost of the variation.
- 14.2 The variation, including the cost of the variation and any change to the date for delivery, shall be agreed between the parties in writing.

15. WORK HEALTH AND SAFETY

- 15.1 In providing the Supplies, the Supplier shall be responsible for ensuring that its personnel and subcontractors carry out and complete the Supplies safely and in accordance with all legislative requirements, including the Work Health and Safety legislation applicable to the site.
- 15.2 The Supplier shall:
- (a) cooperate with Nukon and its customer and any persons on site that have a work health and safety duty;
 - (b) use safe systems of work;
 - (c) comply with applicable safety policies of Nukon and its customer; and
 - (d) ensure that its personnel undertake any site induction required by Nukon's customer.
- 15.3 The Supplier shall immediately notify Nukon of any death, injury, illness or dangerous incident (including a near miss) ("safety incident") which arises in relation to the provision of the Supplies and provide all information and assistance requested by Nukon in relation to the safety incident.

16. MODERN SLAVERY AND CORPORATE RESPONSIBILITY

- 16.1 The Supplier warrants that:
- (a) neither the Supplier, nor any of its officers, employees or related personnel have been convicted of any offence involving slavery or human trafficking; and
 - (b) to the best of its knowledge and following reasonable enquiries, the Supplier's Supply Chain have not been convicted of any offence involving slavery or human trafficking.

- 16.2 In performing its obligations under the Contract, the Supplier shall:
- (a) comply with all anti-slavery and human trafficking Laws, including the *Modern Slavery Act 2018* (Cth) and if the Supplier conducts business in New South Wales, the *Modern Slavery Act 2018* (NSW);
 - (b) have in place and implement, appropriate anti-slavery and anti-trafficking policies, practices and procedures;
 - (c) incorporate into contracts with its Supply Chain, obligations equivalent to those set out in these clauses 16.1 and 16.2; and
 - (d) notify Nukon as soon as possible following:
 - (i) any actual or suspected breach of this clause by the Supplier or any member of its Supply Chain; and
 - (ii) any actual or suspected slavery or human trafficking in a supply chain relating to this Contract.

16.3 The Supplier acknowledges that it has signed the SAGE Group Corporate Responsibility Charter as at the commencement date of this Contract ("Charter") (available at the link below) and agrees to comply with the terms of the Charter.

[Corporate Responsibility Charter](#)

16.4 The Supplier shall ensure that its subcontractors, suppliers and service providers adhere to a code of conduct substantially equivalent to the Charter.

17. NOTICES

- 17.1 Any notice required to be given by a party shall be sent to the postal or email address specified in the Order.
- 17.2 A notice shall be deemed to have been given when:
- (a) if sent by post, on the date which is 5 business days after the date of dispatch; or
 - (b) if sent electronically, at the time shown in the delivery confirmation report generated by the sender's email system or if the sender's email system does not generate a delivery confirmation report, within 12 hours after the email is sent, unless the sender receives a return email notification that the email was not delivered.
- 17.3 A notice received after 5pm (recipient's time) is taken to have been received on the next business day.

18. GENERAL

18.1 Jurisdiction

This Contract is governed by and must be construed according to the laws applying in South Australia. Each party submits to the non-exclusive jurisdiction of the courts of South Australia with respect to any proceedings that may be brought in connection with the Contract.

18.2 Assignment

A Party may only assign a right under the Contract with the prior written consent of the other party, which shall not be unreasonably withheld.

18.3 Waiver

A right under this Contract cannot be waived except in writing by a party.