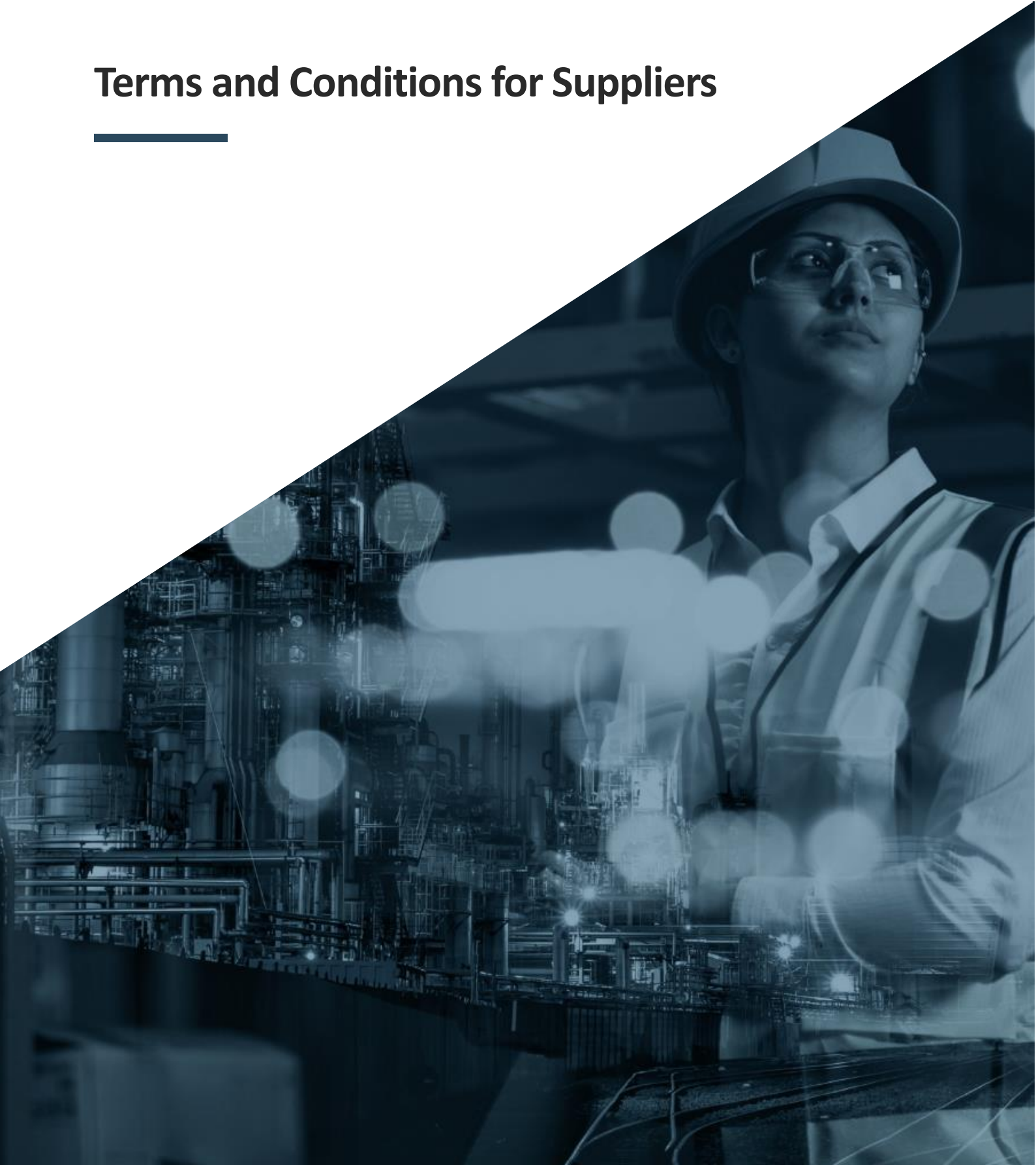




## Terms and Conditions for Suppliers

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## Table of contents

1.	DEFINITIONS .....	1
2.	APPLICATION.....	2
3.	PRECEDENCE .....	2
4.	DELIVERY, DELAY AND EXTENSIONS OF TIME.....	2
5.	WARRANTIES.....	4
6.	RISK AND TITLE.....	4
7.	PRICE AND PAYMENT .....	5
8.	CONFIDENTIALITY AND INFORMATION SECURITY.....	5
9.	INSURANCE.....	6
10.	INDEMNITIES.....	6
11.	INTELLECTUAL PROPERTY .....	6
12.	TERMINATION .....	7
13.	SUBCONTRACTS.....	7
14.	SECURITY OF PAYMENTS ACT.....	8
15.	VARIATIONS.....	8
16.	WORK HEALTH AND SAFETY .....	9
17.	MODERN SLAVERY AND CORPORATE RESPONSIBILITY.....	9
18.	NOTICES.....	10
19.	GENERAL .....	10

# Supplier Terms and Conditions

## 1. DEFINITIONS

In these Conditions:

<b>Conditions</b>	means these standard terms and conditions for Suppliers.
<b>Confidential Information</b>	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:  (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.
<b>Contract</b>	means the Conditions and the Order which together make up the contract between SAGE and the Supplier.
<b>Force Majeure Event</b>	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.
<b>GST</b>	has the meaning defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
<b>Heavy Vehicle</b>	has the meaning defined in the Heavy Vehicle National Laws.
<b>Order</b>	means the purchase order issued by SAGE to the Supplier.
<b>SAGE</b>	means SAGE Automation Pty Ltd ABN 59 104 119 833.
<b>Security of Payments Act</b>	means where the works are located in:  New South Wales - the <i>Building and Construction Industry Security of Payment Act 1999</i> (NSW);  Victoria - the <i>Building and Construction Industry Security of Payments Act 2002</i> (Vic);  Queensland - the <i>Building and Construction Industry Payment Act 2004</i> (Qld);  Western Australia - the <i>Construction Contracts Act 2004</i> (WA);  South Australia - the <i>Building and Construction Industry Security of Payment Act 2009</i> (SA);

Tasmania - the *Building and Construction Industry Security of Payment Act 2009* (Tas);

Australian Capital Territory - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);

Northern Territory - the *Construction Contracts (Security of Payment) Act 2004* (NT).

<b>Supplier</b>	means the person or company with whom the Order is placed.
<b>Supplies</b>	means all goods and/or services identified in the Order.
<b>Supply Chain</b>	means the Supplier's direct and indirect subcontractors, service providers and suppliers.

## **2. APPLICATION**

- 2.1 The Supplier agrees to supply the Supplies to SAGE in accordance with the Contract.
- 2.2 The Contract constitutes the agreement between SAGE 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 SAGE will not issue an Order unless the Supplier has been pre-qualified by SAGE within the two years immediately preceding the requirement for an order to be placed.
- 2.4 SAGE'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. Partial deliveries shall not be made unless agreed in advance in writing by SAGE.
- 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 SAGE 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 the Contract by SAGE or by a Force Majeure Event, the Supplier may make a written request to SAGE for an extension of time to the date for delivery specified in the Order.
- 4.5 In order to ensure that SAGE is in a position to meet its obligations to its customers, any application for an extension of time by the Supplier under clause 4.4 must be made 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, SAGE 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 SAGE 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 SAGE in accordance with clause 4.6), SAGE shall be entitled:
  - 4.8.1 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 SAGE for such Supplies; and
  - 4.8.2 to recover from the Supplier any additional expenditure reasonably incurred by SAGE in obtaining other equivalent supplies in replacement to the extent that such expenditure is more than the moneys paid by SAGE 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 SAGE in relation to access to SAGE's or its client's premises and all applicable SAGE and SAGE client policies and procedures.
- 4.10 Without limiting clauses 4.2 and 4.9, when delivering Supplies or arranging for the delivery of Supplies to SAGE using a Heavy Vehicle, the Supplier must:
  - 4.10.1 comply with all mass, dimension, load and restraint requirements for vehicles or the carriage of goods by road;

- 4.10.2 comply with all fatigue management, driving hours, speed or traffic requirements;
  - 4.10.3 comply with all relevant requirements in relation to container weight declarations; and
  - 4.10.4 manage all work diaries, transport and journey documentation, including consignments notes, declarations, manifests and log books, in accordance with the Heavy Vehicle National Law and Regulations.
- 4.11 The Supplier must co-operate and comply with all reasonable directions of SAGE in:
- 4.11.1 monitoring and ensuring compliance by the Supplier and SAGE with the Heavy Vehicle National Laws;
  - 4.11.2 responding to an investigation or enquiry from any relevant government authority or agency regarding compliance with the Heavy Vehicle National Laws; and
  - 4.11.3 inspecting any transport or journey documentation of the Supplier that relates to the provision of Supplies.

## **5. WARRANTIES**

- 5.1 The Supplier warrants that the Supplies will:
- 5.1.1 be fit for purpose;
  - 5.1.2 be free from defects in design, materials and workmanship; and
  - 5.1.3 comply with Australian Standards and any specifications specified in the Order or otherwise 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, SAGE shall be entitled to exercise any of the following rights:
- 5.2.1 to reject all or any of the Supplies and require the Supplier to credit SAGE with the price of the Supplies; or
  - 5.2.2 to require the Supplier to promptly replace or repair the Supplies at no cost to SAGE.
- 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 SAGE upon delivery, but without prejudice to any right of rejection SAGE may have.

- 6.2 Any Supplies which are defective, damaged or do not comply with the Contract may be rejected by SAGE 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 SAGE by email to [accounts.payable@gotosage.com](mailto:accounts.payable@gotosage.com) within 10 days of completion of the provision or 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 SAGE within 30 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 SAGE is entitled to set off from any amount owed by SAGE to the Supplier, any amount the Supplier owes SAGE, whether under this Contract or otherwise.
- 7.6 SAGE may withhold payment for Supplies that it disputes in good faith until the dispute has been resolved.

## **8. CONFIDENTIALITY & INFORMATION SECURITY**

- 8.1 Subject to clause 8.2, neither party may, without the prior written approval of the other party, disclose Confidential Information of the other party 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:
- 8.2.1 required by law; or
  - 8.2.2 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.
- 8.4 The Supplier must implement, maintain and regularly test its security policies, procedures and controls in line with SAGE Supply Chain Security Information Statement and Supplier Relationship Procedure Security Procedure to identify and minimise or eliminate any material risk within its operating environment and supply chain. These include, but are not limited to eliminating or taking all reasonably practicable steps to mitigate against the risk of:
- 8.4.1 unauthorised access, interference or exploitation of critical assets;

- 8.4.2 misuse of Confidential Information supplied by SAGE;
  - 8.4.3 misuse of access to critical assets; and
  - 8.4.4 disruption to the operation of a critical asset due to any disruptions or issues within the supply chain.
- 8.5 The Supplier must promptly report to SAGE any non-compliance with this clause 8 or any event described in clause 8.4.1 to 8.4.4 inclusive.

## 9. INSURANCE

The Supplier and SAGE 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:

- 9.1 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;
- 9.2 Workers compensation insurance covering liability to employees of the Supplier under the laws of their place of employment; and
- 9.3 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 Indemnifying Party's negligence, breach of contract, breach of statute or otherwise, if the Supplier is the Indemnifying Party, in connection with:
  - 10.1.1 the design, manufacture, supply, sale, delivery or use of the Supplies; and
  - 10.1.2 any failure of the Supplies to comply with the requirements of the Contract.
- 10.2 The Indemnifying Party's liability to indemnify the Indemnified Parties shall be reduced proportionately to the extent that the Indemnified Parties caused or contributed to the liability, damage, cost, loss, expense or claim.

## 11. INTELLECTUAL PROPERTY

- 11.1 The Supplier indemnifies SAGE against any claim made or action commenced against SAGE 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 SAGE.

- 11.2 SAGE 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 SAGE.
- 11.3 Where the design, specifications or data for the Supplies is provided by SAGE, 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, SAGE.
- 11.4 The intellectual property rights in any improvements or modifications to any design, specification or data provided by SAGE shall be assigned by the Supplier to, and vests upon creation in, SAGE.
- 11.5 The Supplier grants SAGE 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 SAGE 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. SAGE'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 SAGE 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 hereunder. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.

## **13. SUBCONTRACTS**

- 13.1 The Supplier shall not subcontract any part of the provision of the Supplies without the prior written consent of SAGE. SAGE'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. SECURITY OF PAYMENTS ACT**

14.1 The Supplier must:

14.1.1 ensure that, within 24 hours after any notice is received under the Security of Payments Act by the Supplier from any of its subcontractors in relation to the Supplies, a copy of that notice is given to SAGE;

14.1.2 immediately notify SAGE if it becomes aware that a subcontractor intends to exercise a statutory lien over any plant and materials supplied by the subcontractor for use in connection with the work forming part of the Supplies; and

14.1.3 ensure that its contract with its subcontractors contains clauses equivalent to clause 14.1, so as to enable the Supplier to comply with its obligations under this clause 14.1.

14.2 If SAGE becomes aware that a subcontractor is or is likely to become entitled to:

14.2.1 suspend work or the supply of related goods and services (forming part of the Supplies) under the Security of Payments Act; or

14.2.2 exercise a statutory lien over any unfixed plant and materials supplied by the subcontractor for use in connection with the work forming part of the Supplies,

SAGE may in its absolute discretion, pay the subcontractor such money that is or may be owing under the Security of Payments Act to the subcontractor in respect of the related goods and services forming part of the Supplies. Any such amount that was reasonably owed to the subcontractor under the Security of Payments Act and was paid by SAGE is recoverable from the Supplier as a debt due and payable to SAGE and SAGE may set off that amount from money otherwise payable to the Supplier.

14.3 Upon an adjudication application under the Security of Payments Act, the parties acknowledge and agree that the Supplier shall choose the Resolution Institute to be the authorised nominating authority for the purposes of the Security of Payments Act.

## **15. VARIATIONS**

15.1 SAGE may direct the Supplier to undertake a variation to the Supplies. Upon receipt of a direction to vary the Supplies, the Supplier shall advise SAGE 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.

15.2 The variation, including the cost and any change to the date for delivery shall be agreed between the parties in writing.

## 16. WORK HEALTH AND SAFETY

- 16.1 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.
- 16.2 The Supplier shall:
- 16.2.1 cooperate with SAGE and its customer and any persons on site that have a work health and safety duty;
  - 16.2.2 use safe systems of work;
  - 16.2.3 comply with applicable safety policies of SAGE and its customer; and
  - 16.2.4 ensure that its personnel undertake any site induction required by SAGE's customer.
- 16.3 The Supplier shall immediately notify SAGE 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 SAGE in relation to the safety incident.

## 17. MODERN SLAVERY AND CORPORATE RESPONSIBILITY

- 17.1 The Supplier warrants that:
- 17.1.1 neither the Supplier, nor any of its officers, employees or related personnel have been convicted of any offence involving slavery or human trafficking; and
  - 17.1.2 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.
- 17.2 In performing its obligations under the Contract, the Supplier shall:
- 17.2.1 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);
  - 17.2.2 have in place and implement, appropriate anti-slavery and anti-trafficking policies, practices and procedures;
  - 17.2.3 incorporate into contracts with its Supply Chain, obligations equivalent to those set out in these clauses 17.1 and 17.2; and
  - 17.2.4 notify SAGE as soon as possible following:
    - (a) any actual or suspected breach of this clause by the Supplier or any member of its Supply Chain; and

- (b) any actual or suspected slavery or human trafficking in a supply chain relating to this Contract.

17.3 The Supplier acknowledges that it has signed the SAGE Group Corporate Responsibility Charter (**Charter**) (available at the link below) and agrees to comply with the terms of the Charter.

17.4 The Supplier shall ensure that its subcontractors, suppliers and service providers adhere to a code of conduct substantially equivalent to the Charter as at the commencement date of this Contract.

[Corporate Responsibility Charter](#)

**18. NOTICES**

18.1 Any notice required to be given by a party shall be sent to the postal or email address specified in the Order.

18.2 A notice shall be deemed to have been given when:

18.2.1 if sent by post, on the date which is 5 business days after the date of dispatch; or

18.2.2 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.

18.3 A notice received after 5.00 pm (recipient's time) is taken to have been received on the next business day.

**19. GENERAL**

**19.1 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.

**19.2 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.

**19.3 Waiver**

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