
Standard Conditions of Purchase – Professional Services

1. DEFINITIONS

Unless the context otherwise requires:

“Agreement” means the agreement between the Purchaser and the Contractor, whether evidenced by a Purchase Agreement (including any Agreement Schedule), Purchase Order or otherwise, to which these Standard Conditions of Purchase – Professional Services, are incorporated by reference to therein.

“Intellectual Property Rights” means all patents, patent applications, copyright, design rights, trademarks (whether registered or unregistered), moral rights and confidential information.

“Purchaser” means the SAUNDERS INTERNATIONAL LTD, a company incorporated in the State of New South Wales, Australia (ABN 14 050 287 431) or any of its affiliates named in the Agreement.

“Services” means all the professional services to be provided and performed by the Contractor as outlined in the Agreement including any variations permitted under the terms and conditions of the Agreement.

“Contractor” includes the Contractor’s successors and permitted assigns.

2. PERFORMANCE

2.1. The Contractor shall use competent and qualified personnel in the performance of Services and shall ensure that such personnel exercise a standard of care, diligence and skill expected of professional persons experienced in providing the services outlined in the Agreement and warrants that the Services will be free from any error.

3. TIME

3.1. The Contractor shall perform the Services expeditiously in accordance with the time requirements specified in the Agreement. Where the Purchaser makes a variation to the Services that requires an extension of time for completion of the Services, the Contractor shall immediately notify the Purchaser in writing of the proposed extent of the additional time required for Purchaser’s consideration and of the new date proposed for completion of the Services.

4. ASSIGNMENT

4.1. The Contractor shall not sublet or assign the Agreement or any of the Services without the prior written approval of Purchaser. In the event that the Purchaser approves the assignment of the whole or any part of the Services to a subcontractor, then Contractor shall ensure that the subcontractor’s terms of engagement are identical to Purchaser’s terms of engagement of Contractor. Contractor will at all times be responsible for the performance of Contractor’s subcontractors.

5. INDEPENDENT CONTRACTOR

5.1. Contractor is and shall remain an independent Contractor and is not the servant, agent or wages person of the Purchaser.

6. VARIATIONS

6.1. Purchaser may at any time, and from time to time, vary the Services. Where Contractor requires an additional payment as a result of variations to Services, Contractor shall notify Purchaser in writing within five (5) days after receipt of the Purchaser’s Instruction to vary the Services. The Purchaser shall not be under any obligation to pay for variations that are not directed or approved by it.

7. PAYMENT

7.1. In consideration for services performed Purchaser shall pay Contractor in accordance with the Schedule of Rates and/or lump sum payments prescribed in the Agreement (“Fee”). Unless otherwise stated in the Agreement, payment will be effected, by the end of the month following the month of receipt of correctly submitted invoices for the value of Services completed.

7.2. Should any portion of the amount invoiced be subject to dispute payment of the disputed portion will be withheld pending resolution of the dispute.

7.3. Without prejudice to any other rights, the Purchaser may deduct from any monies which may be, or become, payable to the Contractor, any money due from the Contractor to the Purchaser under this Agreement or any other contracts or orders between the Contractor and the Purchaser. Nothing in this Agreement shall affect the right of the Purchaser to recover from the Contractor, the whole of the debt or any balance that remains owing after deduction.

8. INVOICES

8.1. The Contractor shall submit a monthly invoice to Purchaser for completed Services including, where the Agreement provides for same, the value of subcontracted Services (if any) substantiated by detailed supporting documentation including but not limited to copies of subcontractors invoices, equipment hire dockets, airline tickets, motel/hotel accommodation and meal dockets, car rental dockets and detailed extracts from weekly timesheets.

8.2. Time related charges shall be itemised, and Purchaser reserves the right to arrange for independent audit and verification of itemised times and costs against original timesheets in the Contractor’s office if so desired.

8.3. If stated in the Agreement, Retentions of a nominated per cent of the invoiced amount shall be withheld by the Purchaser from progress claims and refunded to the Contractor following completion of the Defects Liability Period stated in Clause 9 of these General Conditions. Retentions may, at the option of the Purchaser, be held in the form of an unconditional bankers undertaking/s with no expiry date and which shall be issued in favour of the Purchaser in a form and by a Bank acceptable to the Purchaser.

9. RE-PERFORMANCE OF SERVICES

9.1. In the event that the Services or any part thereof has not been performed in accordance with the requirements of the Agreement, Purchaser, in addition to any other rights or remedies, may require Contractor to re-perform such Services provided that Purchaser gives written notification of its requirements to Contractor within twelve months after the date of completion of the Services. This period of twelve months shall be known as the Defects Liability Period. Expiry of the Defect Liability Period shall not relieve the Contractor of any liability that the Contractor may have in relation to the Services.

10. DELAYS

10.1. If Contractor is delayed in the performance of the Services by any acts or omissions of Purchaser or Purchaser’s agents, employees, contractors or subcontractors or by Acts of God, boycotts, strikes and any other causes that are beyond Contractor’s reasonable control, Contractor shall within five (5) days from the commencement of the occurrence of each such cause notify Purchaser in writing of the extent, timing and effect of such delay, and the completion date of the Services shall be extended by the period of time during which the Purchaser determines the Contractor is actually delayed. The Contractor will at all times be required to take reasonable measures to mitigate the effect of any delays.

11. LIQUIDATED DAMAGES

11.1. Where stated in the Agreement, if the Contractor fails to provide the Services by the date set out in the Agreement, the Contractor agrees that it shall be liable for liquidated damages for delay at the per day rate and up to the maximum amount as set out in the Agreement. The Contractor agrees that any amount of liquidated damages as set out in the Agreement is a genuine pre-estimate of the damages the Purchaser is likely to suffer in the event of delayed provision of the Services and is not a penalty. Without limiting the Purchaser’s entitlement under the Agreement, if no amounts are set out in the Agreement relating to liquidated damages, then liquidated damages for delay shall not apply.

12. CONFIDENTIALITY OF INFORMATION

12.1. For the protection of proprietary and confidential information, all plans, drawings, design specifications, programmes, process control details and other information whatsoever (collectively in this Clause called “Confidential Information”) supplied by or on behalf of Purchaser to the Contractor shall remain property of Purchaser or of its legal owner. Contractor shall not disclose to any other person, firm or corporation or use in any manner except in connection with the Services, any Confidential Information disclosed by the Purchaser or on behalf of Purchaser to the Contractor.

12.2. Any improvements to any Confidential Information developed as a result of or in connection with the Services covered by this Agreement by either Purchaser or Contractor or Purchaser and Contractor jointly shall be and remain the property of Purchaser. Contractor shall not disclose to any other person, firm or corporation any such improvements.

12.3. Contractor shall not, without the prior written consent of Purchaser, disclose to any third parties details of any information gained as a result of the Services performed pursuant to the Agreement or details of any reports provided to the Purchaser. Contractor agrees that

Contractor shall advise all employees and permitted subcontractors performing the Services in respect of the Agreement of the need for confidentiality in respect of the Services and any reports produced in respect of the Services, prior to engaging the relevant employees or subcontractors on tasks relating to the Services.

The Contractor shall indemnify and keep indemnified the Purchaser for any loss or damage suffered as a result of a breach of the Contractor's obligations detailed in this Clause.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Contractor shall indemnify Purchaser against any or all claims and expenses incurred in connection therewith (including legal fees and other such claims), for infringement or use of Intellectual Property Rights in connection with the Services or any part thereof or the use by Purchaser of any process, system, method or arrangement furnished by Contractor pursuant to this Agreement.
The Contractor shall assist as fully as possible Purchaser to defend any action or proceedings brought against Purchaser for infringement of Intellectual Property Rights in relation to Services performed under the Agreement.
- 13.2. In the event Purchaser is prohibited from the operation or use of the Services or any part thereof in connection with any action or proceeding, the Contractor shall (at Contractor's sole expense) take all reasonable steps possible to procure for the Purchaser the right to operate or use the Services. If the Contractor cannot so procure the aforesaid right within a reasonable time, the Contractor shall then promptly (at the Contractor's expense); (i) modify the Services so as to avoid infringement of any Intellectual Property Rights, or (ii) replace said Services with Services which does not infringe or violate any said Intellectual Property Rights, or (iii) remove said Services and refund any payments already received by the Contractor and pay to Purchaser any costs and other expenses that may have been paid or incurred by Purchaser in connection with the Services so removed.

14. INTELLECTUAL PROPERTY ASSIGNMENT

- 14.1. The Contractor hereby assigns to Purchaser its full right, title and interest in all present and future Intellectual Property Rights created or to be created by Contractor in performance of the Services pursuant to the Agreement. The Contractor shall obtain a similar assignment in favour of Purchaser from each subcontractor engaged by Contractor in relation to the Services
- 14.2. Contractor shall, at the request of Purchaser, execute or cause to be executed all necessary documents and applications to give effect to the assignment of Intellectual Property Rights and to have registered in the name of Purchaser or Purchaser's nominee such intellectual Property Rights.
- 14.3. The obligations under this Clause shall survive the termination or completion of the Agreement.

15. SAFETY

- 15.1. Contractor shall ensure that Contractor's employees, agents and invitees and Contractor's subcontractors and their employees, agents and invitees while upon the Purchaser's premises, or any other site on which the Contractor is contracted to work, comply with all applicable laws, rules and regulations, the Purchaser's safety policies and regulations and safety regulations relevant to a site where the Purchaser has contracted the Contractor to Services on its behalf. Purchaser on request shall supply to Contractor a copy of Purchaser's policies and regulations and/or other relevant site-specific safety regulations.

16. INDEMNITY – INJURY AND DAMAGE

- 16.1. The Contractor shall indemnify the Purchaser, its employees and agents against all losses, liabilities, claims and expenses which may arise from the death of or injury to the Contractor or any person employed by the Contractor or any subcontractor or any person employed by any subcontractor on or in connection with the Services whether at Common Law or under any statute relating to Workers' Compensation or Employer's Liability except those which may be caused by the sole negligence of Purchaser, its servants or agents.
- 16.2. The Contractor shall indemnify the Purchaser, its employees and agents in respect of any loss, liability, claim or expense which may arise from the death of or injury to any person employed by the Purchaser or any subcontractor of the Purchaser or any person employed by the subcontractor of the Purchaser arising from or in connection with the Services, or the results of the Services, or any recommendations made by the Contractor.
- 16.3. The Contractor shall indemnify the Purchaser in respect of any loss, liability, claim or expense which may arise from property damage caused by Contractor or any subcontractor to the Contractor arising from or in connection with the Services, or the results of the Services, or any recommendations made by the Contractor.

- 16.4. The Contractor shall indemnify the Purchaser in respect of any loss, liability, claim or expense incurred by the Purchaser or any third party which arises from or in connection with the Services, or the results of the Services, or any recommendations made by the Contractor.

17. SUSPENSION

- 17.1. The Purchaser may suspend the Services in whole or in part at any time by written notice to the Contractor stating the extent and effective date of such suspension. Contractor shall forthwith suspend the Services to the extent specified including any Services in progress by subcontractors. Purchaser shall compensate Contractor for Services performed up to the time of suspension.
- 17.2. Where a lump sum price forms part of the Agreement, Purchaser shall compensate Contractor pro rata for lump sum Services completed. Contractor shall propose action necessary for orderly suspension. A course of action shall be mutually agreed, and Purchaser shall compensate Contractor for costs incurred in carrying out the agreed course of action, except to the extent that the suspension was initiated as a result of an act or omission of the Contractor. Contractor shall do all things reasonably possible to reduce such costs to a minimum.

18. TERMINATION

- 18.1. Purchaser may for its convenience terminate the Services in whole or in part at any time by written notice to Contractor which shall state the extent and effective date of such termination. On the effective date thereof Contractor shall stop all Services by Contractor and Contractor's subcontractors, terminate subcontracts outstanding, take necessary action to protect Purchaser's proprietary interests in the Services then completed and take any other actions which Purchaser may reasonably direct.
- 18.2. In the event of such termination, Purchaser shall pay to Contractor the value of the Services then completed and such other costs which the Contractor is obliged to pay as a result of termination.
- 18.3. Where a lump sum price forms parts of the Agreement, Purchaser shall compensate Contractor pro rata for lump sum Services completed. Contractor shall propose action necessary for orderly termination.
- 18.4. A course of action shall be mutually agreed and Purchaser shall compensate Contractor for costs incurred in carrying out the agreed course of action. The Contractor shall do all things reasonably possible to reduce such costs to a minimum.

19. DEFAULT

- 19.1. If Contractor defaults in the performance and observance of this Agreement or any term and condition herein contained, then Purchaser may without limitation to any of its other rights:
- suspend payment under the Agreement until the default is remedied; or
 - if the default has not been remedied within fourteen (14) days of a notice from Purchaser to Contractor identifying the default (whether or not payments have been suspended), terminate the Agreement by written notice to the Contractor.

20. UNSUITABLE PERSONS

Purchaser shall be at liberty to object to any representative and/or person employed by Contractor or subcontractor who in the opinion of Purchaser is guilty of misconduct or is incompetent or negligent. Contractor shall remove the person objected to from any group performing any of the Services upon receipt of written notice from the Purchaser requiring Contractor to do so.

21. CONFORMANCE TO REGULATIONS

Contractor shall ensure that its recommendations including all drawings and specifications shall conform with

- all rules and regulations of the Purchaser
- statutory requirements of any authority that has jurisdiction over the Services.

22. ITEMS TO BE SUPPLIED BY CONTRACTOR

Contractor shall supply all labour, tools, implements, equipment and consumables necessary for the completion of the Services except those items which are specified in the Agreement as Purchaser supplied.

23. INSURANCE

- 23.1. General Business
Contractor shall procure and maintain at the Contractor's expense and require subcontractors to procure and maintain at their expense the following insurance. All policies must be in the joint names of the Purchaser and the Contractor and must be maintained current for the full period of the Agreement. Unless otherwise stated in the Agreement, the values stated in this clause will apply.
- Workers' Compensation insurance issued by the relevant Authorities in each jurisdiction where any Employee of Contractor or Contractor's Sub-contractors perform any Services in any way related to this Agreement, including Employer's liability insurance to protect Contractor and Contractor's subcontractor against any

claims and liability arising out of the Common Law or Statutes relating to employees for accident or injury to any person employed by Contractor or by any subcontractor in connection with the Services.

- (ii) Public Liability Insurance covering all of Contractor's operations hereunder including but not limited to the operations of all subcontractors, the operation of vehicles and equipment which are not registered for road use by Contractor or subcontractors with a limitation of not less than AUD 10,000,000, any one occurrence, for injury to or death of any one or more persons and for property damage.
- (iii) Automobile bodily injury liability insurance and automobile property damage liability insurance on all vehicles which may at any time, or from time to time, be used in performance of or in connection with the Services.

B. Professional Indemnity Insurance

Contractor shall provide professional indemnity insurance to a limit not less than AUD 5,000,000 for any one occurrence and AUD 10,000,000 in the aggregate in any year. The policy shall include a run-off period of no less than seven (7) years.

Certificates of Currency for all of the above insurance policies shall be furnished by the Contractor to the Purchaser within fourteen (14) days of the commencement date of the Agreement and at other times as requested by the Purchaser.

24. MOTOR VEHICLES

24.1 All motor vehicles used by Contractor on Purchaser's site or a site on which Purchaser may be contracted to work shall be and shall remain registered for use on public roads. All registered motor vehicles shall be kept in a roadworthy condition. Failure to do so may result in Purchaser directing Contractor to remove any motor vehicle from Purchaser's site.

25. TAXES

The Contractor must pay all Taxes to the relevant Authority. Without limiting the foregoing, the Contractor will be solely liable for Tax imposed on the Contractor in respect of income derived by the Contractor in the provision of any Services.

Where the Purchaser is required by Law to withhold or deduct any Withholding Amount from any payment due to the Contractor, the Contractor:

- (i) authorises the Purchaser to withhold or deduct the Withholding Amount; and
- (ii) acknowledges and agrees that when the Purchaser pays the Withholding Amount to the relevant Authority, the Purchaser is deemed to have paid an amount equal to the Withholding Amount to the Contractor,

and when the Purchaser withholds or deducts that amount from any payment due to the Contractor, the Purchaser must give the Contractor written notice of the Withholding amount.

26. PROPER LAW

The Laws of the State of New South Wales, Australia shall be the proper laws of this Agreement and each party shall agree that any action or proceeding arising in connection with the Agreement shall be held in Sydney, New South Wales, Australia and be subject to the non exclusive jurisdiction of the Courts of New South Wales or any Court competent to hear appeals therefrom.

27. NOTICES

All written notices required or permitted to be given under the Agreement shall be given by either party to the other by posting same in a sealed envelope with postage prepaid, or by telex or facsimile which shall be addressed to the respective parties at the address shown in the Agreement. Either party may at any time change the addresses to which notices to it are to be sent by the other party.

28. DISPUTE DETERMINATION

Any dispute on any matter arising out of or pursuant to the Agreement shall be solved in the following manner.

All disputes arising in connection with the Agreement which cannot be settled by proper and continuous discussion between the parties shall be referred to the Chief Executives of the parties for negotiation. If resolution cannot then be achieved within a reasonable time and to the mutual satisfaction of the parties, the dispute may be submitted by either party to any court having jurisdiction to settle the matter.

29. PROPORTIONATE LIABILITY

29.1 For the purposes of this clause, a reference to Proportionate Liability Acts means each of the following or, if repealed, the succeeding legislation:

- (a) The Civil Liability Act 2002 (NSW);
- (b) The Proportionate Liability Act 2005 (NT) and the Building Act 1996 (NT);
- (c) The Civil Liability Act 2003 (Qld);
- (d) The Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005 (SA);
- (e) The Civil Liability Act 2002 amended by the Civil Liability Amendment (Proportionate Liability) Act 2005 (tas) and the Building Act 2000 (Tas);

- (f) The Wrongs Act 1958 (Vic); and
 - (g) The Civil Liability Act 2002 (WA)
- 29.2 To the maximum extent permitted by Law:
- (a) The Parties agree that the Proportionate Liability Acts will not have any application to the Contract, the performance of the work under the Agreement, or any of the obligations of the Contractor under the Agreement or at law;
 - (b) Despite the provisions of the Proportionate Liability Acts, the Contractor acknowledges that the Contractor is solely responsible for and indemnifies Saunders in respect of any loss, damage, cost, claim, expense or proceeding that the Purchaser suffers or incurs, arising out of or in connection with any wrongful or negligent act or omission on the part of the Supplier, its officers, employees, agents and subcontractors, in performance of this Agreement or on the part of any Contractor's subcontractor, consultant or supplier engaged by the Supplier in performance of the relevant subcontract or consultancy or supply arrangement; and
 - (c) The Parties agree that their rights, obligations and liabilities will be those which would exist if the Proportionate Liability Acts did not apply.
- 29.3 The Contractor must ensure that all policies of insurance covering third party liability that it is required by the Agreement to effect or maintain, cover the Contractor for potential liability to the Purchaser assumed by reason of the exclusion of the Proportionate Liability Legislation.

30. SOLE AGREEMENT

The Agreement shall be the sole agreement and supersede all other communications with the Contractor whether written or oral.