

SAAB AUSTRALIA PTY LTD - TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these terms:
 - (a) **Saab:** means Saab Australia Pty Ltd (ABN 88 008 643 212), 21 Third Avenue, Technology Park, Mawson Lakes, South Australia 5095;
 - (b) **Price:** means the total amount payable by Saab for the Supplies identified in this Order;
 - (c) **Representatives:** means those representatives appointed under clause 1.2;
 - (d) **Special Conditions:** means any terms and conditions attached to this Order and described as such.
 - (e) **Supplier:** means the party identified as the Supplier on the front cover of this Order;
 - (f) **Supplies:** means any goods or service to be provided by the Supplier under this Order;
 - (g) **Order:** means the contract evidenced by this document;
 - (h) **GST Act:** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated taxation legislation as amended from time to time. The expressions (if and where used in the Order) adjustment note, input tax credit, taxable supply and tax invoice have the meanings given to those expressions in the GST Act;
 - (i) **Modern Slavery:** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
 - (j) To the extent the context shall permit words including singular number shall include the plural and vice versa; and
 - (k) Headings are for guidance only and not part of this Order.
- 1.2. No terms or conditions submitted by the Supplier that are in addition to, different from or inconsistent with those contained in this Order, including any terms and conditions contained in any Supplier quotation, invoice, order acknowledgement, document or representation (whether oral or in writing), shall be binding upon the parties unless expressly agreed to in writing and signed by a duly authorised representative of each of the parties.

2. SPECIAL CONDITIONS

- 2.1. The Special Conditions (if any) form part of, and are incorporated into, this Order.
- 2.2. To the extent of any inconsistency between these terms and conditions and any Special Conditions, the Special Conditions shall prevail.

3. REPRESENTATIVES AND NOTICES

- 3.1. Each party's Representative has the authority to administer that party's rights and obligations under this Order. Unless the other party is notified in writing to the contrary, Saab's Representative is its Commercial Manager and the Supplier's Representative is its General Manager.
- 3.2. Representatives' addresses shall be as on the front of the Order.
- 3.3. All notices shall be in writing and shall be addressed to the relevant Representative, by a manner agreed, or by delivering it to the address on a business day during normal business hours (in which case the notice will be deemed to be received on the day of delivery), or by sending it to the address of the party by pre-paid ordinary post (in which case the notice will be deemed to be received five (5) clear business days after posting).
- 3.4. All documents (including correspondence) related to the Order must quote Saab's Order number, Order line number, and part number (where applicable).

4. TERMS OF DELIVERY

- 4.1. The Supplies shall be delivered in the quantities and by the dates specified in the Order to the place(s) specified. If no date is specified for delivery of a particular line item, the Supplier shall deliver that particular line item promptly after the Supplier receives the Order. Until the Supplies are delivered and accepted by Saab, any goods to be supplied are at the sole risk of the Supplier. If the Supplier, acting diligently, becomes aware that the delivery will or may be delayed by any cause, the Supplier shall promptly advise Saab's Representative in writing. The Supplier acknowledges that Saab will incur significant loss in the event that delivery is delayed by the Supplier. The Supplier indemnifies Saab against any such loss and will compensate Saab for such loss within seven (7) days of an invoice for such loss being forwarded to the Supplier by Saab.
- 4.2. In the absence of any special instructions contained in the Order the Supplies shall be properly packed and secured to protect against damage during handling, transit and storage.
- 4.3. Subject to clause 4.4, title to the Supplies shall pass to Saab on delivery unless otherwise specified in the Order but without prejudice to any right of rejection which may accrue to Saab.
- 4.4. If the Supplies, or any part of them, are not delivered by the date(s) specified herein, Saab shall be entitled, without prejudice to any other of its rights, to determine the Order in respect of the Supplies undelivered and any other Supplies already delivered which cannot be effectively and commercially used by reason of the non-delivery of the undelivered Supplies. On such determination Saab shall be entitled:
 - (a) to return to the Supplier at the Supplier's risk and expense any of the Supplies already delivered but which, in the opinion of Saab, cannot be effectively used and to recover from the Supplier as a debt due, any monies paid by Saab in respect of such Supplies; and
 - (b) to recover from the Supplier any additional expenditure reasonably incurred by Saab in obtaining other Supplies in replacement.
- 4.5. The originals of delivery advice notes and quality certification must be provided to Saab upon delivery of the Supplies, or any part thereof. A copy of the delivery advice notes and quality certification will be provided by the Supplier with its invoice.

5. SUPPLIES

- 5.1. Supplies shall at the time of delivery be new and of merchantable quality and conform to any quantity, quality and specifications contained in the Order; shall be in compliance with any applicable laws and regulations to which the Supplies are subject to, be fit for any purpose stated in the Order and/or any purpose ordinarily implied from the reasonably expected use of the Supplies; and shall be free from defect.
- 5.2. Where the Order requires any item of the Supplies to be designed, manufactured, tested or installed to a specific standard or standards, or to be delivered in accordance with specific standards, the Supplier shall provide to Saab such information as Saab may reasonably require to verify compliance with the specified standards at the time of delivery of the Supplies or, if Saab reasonably requires further information or clarification with respect to the production and quality of the Supplies, promptly upon receiving a request from Saab for such information.

- 5.3. If, within 12 months of delivery of the Supplies, it appears that the Supplies do not conform with the requirements of the Order, Saab may, without prejudice to any other remedy:
 - (a) require the Supplier at the Supplier's risk and expense to promptly replace or repair the Supplies; and/or
 - (b) require the Supplier to indemnify Saab for all reasonable expenses and additional costs connected with the replacement or repair of the Supplies, and any loss suffered by Saab as a result of the defects.
- 5.4. Where, in the reasonable opinion of Saab, it is not possible or practical to replace or repair the Supplies pursuant to this clause 5 and without prejudice to the operation of clause 5.3(b), Saab may reject the Supplies in whole or in part and require the Supplier to credit Saab with the price thereof.

6. PRICE AND PAYMENT

- 6.1. The Price for Supplies shall be non-variable and, unless otherwise stated, inclusive of all taxes and duties, and the cost of packaging and delivery of the Supplies.
- 6.2. Unless otherwise set out in the Order, the Price is payable on completion of the Supplies. The Supplier shall submit an invoice in respect of the completed Order to the Saab Representative in the form of a valid and correctly rendered Tax Invoice in accordance with the GST Act.
- 6.3. If GST is payable on a supply made under or in connection with the Order, the Supplier may recover from Saab the amount of GST payable but only to the extent that the Tax Invoice submitted by the Supplier satisfies the requirements of the relevant GST legislation so as to enable Saab to claim input tax credits on the Supplies.
- 6.4. Saab will make payment of all undisputed amounts due to the Supplier within 30 days after Saab's receipt of a correctly rendered Tax Invoice. Payment is to be taken as payment on account only and not evidence or an admission that the Supplies meet the requirements of the Order.
- 6.5. Saab will not be liable to pay for any item of the Supplies not delivered in accordance with the Order or make payment against any invoice or claim for payment which does not show the Order number nor for items that are not shown on the Order.
- 6.6. Saab is entitled to set off any amount payable by it to a Supplier against any amount owing to it by the Supplier, whether due to breach of the Order or otherwise.

7. SECURITY AND PPSR

- 7.1. As a condition of an Order, Saab may require the Supplier to provide security for any amounts paid in advance by Saab for the Supplies (**Prepaid Amount**) or otherwise to secure performance by the Supplier of the Order.
- 7.2. If required by Saab, the Supplier must provide the required security in the form of a bank guarantee (**Bank Guarantee**):
 - (a) issued in favour of Saab;
 - (b) in a form and on terms and conditions reasonably acceptable to Saab; and
 - (c) for Prepaid Amounts, for an amount equal to the Prepaid Amount, or otherwise for such other amount as the parties agree.
- 7.3. The Bank Guarantee must be delivered by the Supplier to Saab:
 - (a) for Prepaid Amounts, prior to Saab making payment of the Prepaid Amount to the Supplier; or
 - (b) otherwise, within 7 days after the Order is placed.
- 7.4. If the Supplies have not been delivered by the date which is 30 days prior to the expiry of the Bank Guarantee, then on or before the date which is 14 days prior to the expiry of the Bank Guarantee, the Supplier must provide Saab with a replacement Bank Guarantee in the form and on the same terms as required by this Order. If Saab has not received a replacement Bank Guarantee within the relevant timeframe, this will be a breach of this Order and Saab may draw down the full balance of the Bank Guarantee and hold such amount as cash security.
- 7.5. Saab may have recourse to the Bank Guarantee (or any cash security) where Saab is entitled to exercise a right under this Order or otherwise at law to claim against the Supplier.
- 7.6. Clauses 7.7 to 7.12 (inclusive) will apply to this Order to the extent that:
 - (a) Saab makes payment is made for any Supplies (or part thereof) before delivery; or
 - (b) Saab delivers goods owned by Saab or a third party to the Supplier for the purpose of the Supplier completing the Order.
- 7.7. To secure the manufacture and delivery of the Supplies in accordance with this Order, the Supplier:
 - (a) grants Saab a security interest (as defined in the *Personal Property Securities Act 2009* (Cth) (PPSA)) in any other materials purchased by the Supplier for the purpose of completing the Supplies (**Materials**) together with any completed Supplies; and
 - (b) holds the Materials and any completed Supplies as bailee for Saab for the purpose of storage pending delivery.
- 7.8. The Supplier acknowledges that this Order constitutes a security agreement for the purposes of the PPSA.
- 7.9. The Supplier:
 - (a) will promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Saab may reasonably require to register a financing statement, financing change statement or any other document required under the PPSA or correct any defect in such a statement or document;
 - (b) must not register, or permit to be registered, a financing statement or a financing change statement in relation to the Supplies in favour of a third party without Saab's prior written consent; and
 - (c) must ensure that no security interest in the Supplies is granted by the Supplier which would have priority over Saab's security interest.
- 7.10. To the extent permitted by the PPSA:
 - (a) sections 95, 125, 127, 129(2), 130, 132 (including without limitation 132(3)(d) and 132(4)), 134(2), 135, 136(3) to (5) (inclusive), 137, 142 and 143 of the PPSA will not apply to the security interest created under this Order; and
 - (b) the Supplier waives any right to receive any notice required to be provided under the PPSA (including under sections 144 and 157) in respect of any security interest.
- 7.11. At all times after title has passed to Saab and while the Supplies and any associated Materials are in the Supplier's possession, the Supplier must:
 - (a) clearly label the Supplies and the Materials as being the property of Saab;
 - (b) store the Supplies separately from the Supplier's other property; and
 - (c) insure the Supplies against loss or damage for full replacement value.

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- 7.12. The Supplier irrevocably grants Saab the right to enter the Supplier's property or premises (and must ensure that Saab has the right to enter any other property or premises where the Supplies or Materials are located) to inspect, recover or repossess Supplies or Material for which title rests with Saab or in respect of which Saab holds a security interest (including without limitation if Saab has cause to exercise any of its rights under section 110 of the PPSA), without notice, and without being in any way liable to the Supplier or to any third party (except for Saab's wilful default or where liability cannot be excluded by law). The Supplier indemnifies Saab from and against any claims made by any third party as a result of the exercise by Saab of its rights in accordance with this clause 7.12.
- 8. CONFIDENTIALITY**
- 8.1. The Supplier undertakes to keep all information relating to the Order confidential and not to use or disclose such information other than as contemplated by this Order, unless such information is in the public domain through no breach of this clause 8.
- 8.2. The Supplier shall not use Saab's name or any of the information contained in the Order for publicity purposes.
- 8.3. The Supplier shall comply with any access requirements, including regarding Commonwealth Defence security and site security and safety, nominated in the Order or applicable at the specified delivery location(s).
- 9. INTELLECTUAL PROPERTY**
- 9.1. Subject to clause 9.3 all intellectual property created in the course of, or for the purpose of, the provision of any Supplies under this Agreement shall belong to Saab.
- 9.2. The Supplier will sign any documents or do any act reasonably required in order to vest that intellectual property in Saab.
- 9.3. Ownership of all background intellectual property incorporated in the Supplies remains unchanged. The Supplier hereby irrevocably and unconditionally grants to Saab, a royalty-free, non-exclusive, worldwide, perpetual licence to use any background intellectual property (including the right to sub-license) to the extent that it forms part of or is integral to the Supplies or other items created by the Supplier in connection with the provision of Supplies under the Order.
- 9.4. The Supplier warrants that the Supplies do not infringe the intellectual property rights of any third party either in the country of manufacture or country of use.
- 9.5. For the purposes of this clause 9:
- (a) 'intellectual property' means all intellectual property rights, including without limitation:
- (i). copyright, patents, registered and unregistered trademarks, designs, trade secrets, know-how, rights in relation to any circuit layout, data, invention or work and the right to have confidential information kept confidential; and
- (ii). any application or right to apply for registration of those rights.
- (b) 'background intellectual property' means the intellectual property of the Supplier that:
- (i). is in existence at the time of execution of the Order or is subsequently brought into existence other than as a result of the performance of the Order; and
- (ii). is embodied in, or attaches to, the Supplies or is otherwise necessarily related to the functioning or operation of the Supplies.
- 10. DISPUTE RESOLUTION**
- 10.1. Any party claiming a dispute has arisen under this Order shall give notice to the other clearly identifying the dispute. The Representatives shall meet and make good faith attempts to settle the dispute within 14 days of receipt of the notice.
- 10.2. If the dispute is not resolved within 14 days of the meeting it shall be referred to an expert appointed by the President of the Institute of Arbitrators and Mediators Australia ("the Institute") for expert determination in accordance with the Institute's rules for the Expert Determination of Commercial Disputes.
- 11. INDEMNITIES AND INSURANCE**
- 11.1. The Supplier indemnifies Saab, its related bodies corporate, employees, agents and customers against any loss, damage, cost, expense or liability in relation to:
- (a) injuries (including death) to any person;
- (b) the destruction of the property of any person (including Saab and the Supplier, their agents employees and customers);
- (c) any actual or alleged infringement of any party's intellectual property; and
- (d) any act or omission of the Supplier
- which arises in connection with the Supplies or the Supplier's performance or lack of performance under the Order, whether suffered in contract, tort, statute, in equity or otherwise.
- 11.2. The Supplier shall effect and maintain insurance to cover its liability under sub-clauses 11.1(a), 11.1(b) and 11.1(d) and will provide evidence of such insurance to Saab upon request.
- 11.3. The Supplier's liability under this clause 11 is reduced proportionately to the extent that it is proved that Saab contributed to any loss, damage, cost, expense or liability incurred pursuant to this clause 11.
- 12. WAIVER**
- 12.1. No failure or delay by a party in exercising any power or right conferred upon it by this Order shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other exercise of it.
- 13. TERMINATION AND SUSPENSION**
- 13.1. This Order may be terminated by Saab at any time in whole or part by a notice of termination for any reason whatsoever. If the Order is terminated other than due to the fault of the Supplier, the Supplier may submit to Saab a termination claim in respect of expenditure reasonably and properly incurred by the Supplier in connection with the terminated part of the Order and which represents an unavoidable loss to the Supplier. If the Supplier is in breach of the Order and, at Saab's sole discretion, the breach is capable of being rectified, Saab may issue the Supplier with a written notice stipulating the time period in which the breach is to be rectified. The Order will automatically terminate upon expiry of that time period if the breach has not been rectified. Subject to clause 13.9, if the Order is terminated due to the Supplier's breach, no payment whatsoever is due from Saab to the Supplier.
- 13.2. Upon receipt of a notice of termination the Supplier shall:
- (a) stop work forthwith;
- (b) comply with all reasonable directions of Saab with regard to the Supplies; and
- (c) submit within 1 week of receipt of notice of termination the Supplier's termination claim in a form reasonably prescribed by Saab in the notice of termination.
- 13.3. Saab shall not be liable to pay under clause 13.2 any sum which, when taken together with any sums already paid or due in respect of the Supplies the subject of the notice of termination, shall exceed the total Price of the Supplies under the Order.
- 13.4. In the event of termination of the Order due to the fault of the Supplier, the Supplier shall on request by Saab, deliver to Saab all necessary drawings, designs and information necessary for Saab to obtain the Supplies from elsewhere.
- 13.5. Subject to clause 13.6, in the event of any stoppage, delay or interruption of either Saab's or the Supplier's work or business as a result of any cause beyond the reasonable control of the respective party including the suspension of relevant work by Saab's customer, the parties' obligations under this Order will be suspended until the stoppage, delay or interruption has ceased.
- 13.6. In the event that the Supplier's stoppage, delay or interruption persists for a period of 30 days or more, Saab may by notice in writing determine the Order in respect of the undelivered Supplies and shall not be liable to the Supplier for any amount except the specific line item price for Supplies delivered and accepted by Saab prior to issue of such notice.
- 13.7. Upon termination for breach by the Supplier, the rights and liabilities of Saab and the Supplier shall be the same as if the Supplier had repudiated the Order and Saab had by its notice of termination elected to accept such repudiation.
- 13.8. If a party becomes insolvent or has a receiver or administrator appointed in respect of its business or any of its assets or is compulsorily or voluntarily wound up, that party, the insolvent party, must notify the second party in writing within 7 days of the event. If such an event occurs, or if the second party reasonably forms the belief that any such event may occur, then the second party may without prejudice to any other remedy suspend the performance of or terminate the Order without incurring any liability except in respect of payment for Supplies previously delivered.
- 13.9. Any termination or suspension of the Order shall not prejudice any rights which may have already accrued to either party and both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.
- 14. ASSIGNMENT**
- 14.1. No work on the Order may be subcontracted by the Supplier unless Saab's prior written consent has been obtained.
- 14.2. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, Saab may assign its rights under this Order, and the benefit of those rights, to any ultimate user of the Supplies.
- 15. APPLICABLE LAW**
- 15.1. This Order shall be read and construed according to the laws of the State of South Australia and the parties submit to the non-exclusive jurisdiction of that State's courts.
- 15.2. This Order is subject to and shall not derogate from the provisions of the *Competition and Consumer Act 2010* (Cth) and corresponding State legislation and shall be read and construed subject to the provisions of all laws in force from time to time.
- 16. HEALTH, SAFETY AND THE ENVIRONMENT**
- With respect to both Occupational Health and Safety and the Environment, the Supplier shall comply with all relevant local and national legislation and regulations and take all reasonable and practical measures to prevent or minimise any resulting harm to its workers and the environment.
- 17. MODERN SLAVERY**
- 17.1. The Supplier shall comply with the following:
- (a) all applicable modern slavery laws and regulations, as amended or replaced from time to time, including without limitation the *Criminal Code Act 1995* (Cth) and the *Modern Slavery Act 2018* (Cth); and
- (b) Saab's Modern Slavery Statement and Modern Slavery Code of Conduct.
- 17.2. The Supplier represents and warrants that:
- (a) all information provided to Saab pursuant to this clause 17 is true and accurate and may be relied on by Saab for the purposes of the *Modern Slavery Act 2018* (Cth);
- (b) it will take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Supplies; and
- (c) it will promptly inform Saab if or its employees, agents or contractors become aware of Modern Slavery practices in the operations and supply chains used in the provision of the Supplies.
- 17.3. Within 14 days of a written request by Saab, the Supplier shall provide all information reasonably requested by Saab regarding the risks of Modern Slavery practices in the operations and supply chains used in the provision of the Supplies and the policies and procedures that the Supplier has in place to address these risks.
- 17.4. If the information pursuant to clause 17.2(c) or clause 17.3 demonstrates that the Supplier has Modern Slavery practices that are not addressed or not satisfactorily addressed, the Supplier will, as soon as reasonably practicable, take all reasonable action to address or remove those practices.