

## STANDARD TERMS AND CONDITIONS

### 1. Agreement

- 1.1 These Terms and Conditions apply to all transactions between Us and You including, but not limited to, the sale of Product and the provision of Services on credit, whether or not You have submitted an Application and/or been granted an Account.

### 2. Definitions

- 2.1 In these Terms, unless the context otherwise requires: “*Account*” means a credit account established by Us in Your name; “*Agreement*” means any agreement between Us and You for the sale or delivery of Product or provision of Services by Us to You; “*Application*” means an application by You for commercial credit only, which incorporates these Terms; “*Confidences*” includes all secret and confidential information of whatsoever nature acquired by You in whatsoever form and manner in consequence of or during the course of Your dealings with Us and in particular, but without limiting this general statement, any information as to technical know-how, manufacturing processes, specifications, formulations, and software configurations; “*Due Date*” means, unless otherwise agreed, at the time of Supply or, if You have an Account with Us, the date which is thirty (30) days after the end of the month in which the invoice is dated; “*GST*” means Product and Services Tax as defined in the *A New Tax System (Product and Services Tax) Act 1999 (Cth)*; “*Order*” means any request by You for the sale or delivery of Product or provision of Services by Us; “*PPSA*” means the *Personal Property Securities Act 2009 (Cth)* and its subordinate legislation; “*Price*” means the price at which We agree to sell any Product or provide any Services to You; “*Product*” means any hardware, manufactured material, software, all switchgear and any other goods that We agree to supply to You, including spare parts and accessories of the Product and ancillary Services; “*Services*” means any services provided by Us to You for a quoted or agreed Price; “*Supply*” means any sale or delivery of Product or provision of Services by Us to You, whether on credit or otherwise and whether on an Account or not; “*Terms*” means these Standard Terms and Conditions; “*You/Your*” means any person, firm, corporation or in the case of an unincorporated body, each proprietor jointly and severally, that has given us an Application or an Order, and where the context allows or requires, Your employees, agents, successors, administrators, and assigns; “*We/Us/Our*” means Saunders Automation Pty Ltd (ABN 92 093 758 564) and any of its subsidiary or related entities as defined by the *Corporations Act 2001 (Cth)*.

### 3. Conditions of Approved Credit Accounts

- 3.1 You acknowledge that as part of Your Application, We may check Your credit history to enable Us to evaluate Your creditworthiness.
- 3.2 We may, at any time and without having to provide a reason, refuse to extend further credit to You, vary Your credit limit or terminate Your Account.
- 3.3 You agree to notify Us of any changes to any of the details set out in Your Application or subsequently notified to Us.
- 3.4 The granting by Us of an Account creates no obligation on Us to Supply You and Our refusal or failure to grant You an Account does not prevent Us from Supplying You, whether on credit or otherwise.

### 4. Supply and Delivery

- 4.1 All Product and Services sold or supplied by Us to You are sold or supplied on these Terms as amended from time to time by Us by notice in writing to You at Our discretion. Any alterations to these Terms will apply to all transactions between You and Us occurring after written notification of the altered Terms has been given to You.
- 4.2 In Our absolute discretion We may refuse to Supply You, whether or not part of a contract has been performed, where Product the subject of the Supply are unavailable for any reason or You breach these Terms.
- 4.3 An Order for the sale of Product shall identify the goods ordered, the quantity required and refer to any quotation pursuant to which the Order is made. We may supply Product that vary from those ordered by You and You must accept the Product supplied, provided that such variations are not material.
- 4.4 Any descriptions, illustrations and statements as to performance of the Product contained in catalogues, price lists and other advertising matter do not form part of the Agreement.
- 4.5 Any working drawings, specifications and samples which are produced by Us are merely representative of the Product, forms dimensions and samples and descriptions of the Product. We shall be at liberty to make such variations to any working drawings, specifications or samples to complete the Product, provided always that such variations shall not render the Product unfit for use.
- 4.6 Any variation or cancellation of an Order must first be agreed in writing by Us. You must pay Us all costs, expenses and loss of profits if You cancel an order without Our agreement.
- 4.7 If We agree to deliver or arrange for delivery of Product to an address nominated by You:
- Unless otherwise agreed, You will be responsible for all freight charges, transit insurance and all other costs associated with the delivery and You agree to indemnify Us for and against any such costs of carriage which We reasonably incur on Your behalf;
  - Where We engage a third-party carrier to deliver Product, We do so as Your agent;
  - Delivery of Product to a third-party carrier, either nominated by You or, failing such nomination, to a carrier at Our discretion for the purpose of transmission to You, is deemed to be a delivery of the Product to the You;
  - You or Your authorised representative shall be present at the agreed place and time for delivery and if not, You hereby authorise Us or the carrier to unload the Product at that place and We will not be responsible for any claims, costs or losses suffered by You as a result of that delivery;
  - Product shall be delivered to ground level only at the place You nominate for delivery, and to a position determined by the delivery driver(s) (at their sole discretion) as meeting reasonable safety standards;
  - We may at Our option deliver Product in any number of instalments, unless otherwise agreed in writing with You;

- (g) If You nominate a delivery date, We will take all reasonable steps to achieve delivery on or about that date, however, We do not promise or warrant that the Product will be available on that date and We shall not be liable for any loss (including consequential loss), damages or claims arising from failure or delay in delivery. In no case shall We be liable for any amount payable by You to a third party as a result of a failure or delay in delivery of Product due to any cause whatsoever; and
- (h) If You do not require delivery on the date specified for delivery, We will store the Product for You for up to 7 days without charge. If after 7 days You still do not require delivery, We may nevertheless deliver the Product to You at Your costs. If We agree to continue to store Product for longer than 7 days, You must pay Us a storage fee equal to 1% of the Price of the Product per month or part thereof and You waive all rights to claim for defects in the Product, non-conformity with description or lack of fitness for purpose. You agree that We will not be liable for any theft, loss or damage to the Product from 7 days after the agreed delivery date if We agree to store the Product for You in accordance with this clause. The Due Date remains the same irrespective of whether We agree to store Product.

## **5. Your Obligations Concerning the Supply**

- 5.1 You must inspect all Product upon taking delivery of them and, and in the case of Services, immediately after being advised that the Services have been completed, and You must carry out any tests that a prudent Purchaser would carry out in relation to such Product or Services. You will have seven (7) days after delivery to notify Us of any alleged defect in the Supply or any other reason why You believe the Supply does not comply with Your Order. If You do not notify Us of any defect or irregularity in the Supply within this time You will be deemed to have accepted the Supply free of any defect or irregularity.
- 5.2 You warrant that the Supply is not intended and will not be used for Your own personal, household or domestic purposes.
- 5.3 All returns must be approved by Us and You will be responsible for the cost of returning any Product that We agree to take back. We will only be obliged to credit You with the Price of the Product paid if the Product are in a saleable condition.
- 5.4 Product that have been specifically produced or purchased by Us to meet Your unique specifications are not returnable.

## **6. Price and Payment**

- 6.1 Unless specified otherwise Our quotations are valid for 30 days from date of issue.
- 6.2 Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, rates of exchange, shipping expenses, cartage, cost of materials, labour rates, and other charges affecting the cost of production ruling on the date the quotation is made and any increases thereto either before acceptance of or during the currency of the contract shall be to Your account. Prices quoted are in Australian dollars unless specified otherwise.
- 6.3 The Price in relation to any Supply shall be the price quoted by Us or, if no price is quoted, the relevant price listed in any current price list published by Us as at the date on which We receive Your Order.
- 6.4 Any price list supplied or published by Us shall be a guide only and is subject to change without notice.
- 6.5 All prices are listed or quoted exclusive of GST unless otherwise indicated.
- 6.6 If We have any liability to pay GST on any Supply, We will add an amount equivalent to our GST liability to the tax invoice for the Supply and You must pay that amount, in addition to the Price, when You pay the invoice (unless the consideration for that Supply is specifically expressed to be inclusive of or exempt from GST).
- 6.7 You must pay the full amount of any invoice or statement that We issue to You by the Due Date.
- 6.8 If You fail to pay any amount owing to Us by the Due Date, We reserve the right to charge You:
  - (a) An administration fee of \$20.00 per month at the end of each calendar month in which any amount remains overdue for payment by You to Us;
  - (b) Interest on the balance amount outstanding at the rate of 10% per annum from the Due Date, calculated daily; and
  - (c) All costs (including legal costs on a full indemnity basis), expenses or losses incurred or sustained by Us as a result of Your failure to comply with these Terms, including any costs incurred by Us as a result of cheque that Your bank fails to honour upon presentation for payment. Such costs and expenses may be recovered by Us from You as a liquidated debt and may be added to Your Account and invoiced to You.
- 6.9 A written statement signed by a Director, Credit Manager or other duly authorised person on Our behalf stating the balance of monies due to Us by You shall be prima facie evidence of the amount of Your indebtedness to Us at the date of that statement.
- 6.10 You are not entitled to make any set-off against or deduction from any amount You owe to Us in respect of any amount that You claim We owe to You. We may at any time set-off amounts that We owe to You against any sums You owe to Us.
- 6.11 You may pay any amount You owe to Us in respect of any Product, Services or on Your Account by electronic funds transfer, cash or cheque (or, if a credit card facility is offered by Us, by credit card). If any of Your cheques are dishonoured upon presentation for payment. We will thereafter not accept any payment from You in the form of a cheque.

## **7. Security**

- 7.1 You hereby grant a security interest in all Your present and after-acquired property and in all Your present and future rights in relation to any personal property and You charge all beneficial interests (freehold and leasehold) in land wherever located held now or in the future by You as security for Your indebtedness to Us and for Your obligations under this Agreement.
- 7.2 You will immediately execute a consent to caveat or mortgage in terms determined by Us if required by Us to secure the security interest created by this clause or any security interest You have given or created in Our favour.
- 7.3 You irrevocably and by way of security appoint Us and Our agent or solicitor to be Your true and lawful attorney with authority to execute and register a consent to caveat or a mortgage on Your behalf in circumstances where You fail to execute such documents within a reasonable time of being so requested by Us and You consent to the registration of this power of attorney.

## **8. Title and Risk**

- 8.1 The risk in Product and Services passes to You upon delivery of those Product or the supply of those Services to You.
- 8.2 Where We sell Product to You, title to and property in Product remains with Us until:
  - (a) We receive full payment for the Product; and
  - (b) We receive full payment of all other monies owing by You to Us.
- 8.3 So long as any money remains unpaid by You to Us in respect of any Product:
  - (a) The relationship between You and Us is fiduciary;

- (b) You will hold the Product as bailee for Us and will be responsible for any loss, damage or conversion of the Product;
  - (c) You must store the Product in a manner that clearly shows that they remain Our property;
  - (d) We will be entitled to enter Your premises (or those of any associated company or agent where the Product are located) without liability for trespass or any resulting damages in order to retake possession of the Product; and
  - (e) We may keep or re-sell any Product repossessed pursuant to this clause.
- 8.4 Despite the provisions of this clause, where We have agreed to sell and You have agreed to purchase Product, We are entitled to maintain an action against You for the purchase price of the Product.
- 8.5 Where We supply Product to You without first having received all moneys payable for the Product (and any Services), You acknowledge that We have a right to register and perfect a purchase money security interest pursuant to the PPSA.
- 9. Indemnity**
- 9.1 You agree to account to Us for any profit made as a result of any breach of this Agreement.
- 9.2 You agree to indemnify Us for and against all claims, liabilities, loss, damage, costs or expenses that We may directly or indirectly suffer or incur as a result of:
- (a) Damage to any property or injury or harm to any person because of Our delivery of Product under Your direction or otherwise in accordance with Your instructions;
  - (b) Your use of the Product in a reckless or unsafe manner or otherwise than in accordance with normal use or relevant specifications and guidelines;
  - (c) Any action by Us to recover money You owe to Us or to secure, perfect or enforce any of Our rights under this Agreement;
  - (d) Any new or increased tax, levy, duty or other impost imposed as a result of any new or changed law that applies to this Agreement or its subject matter; or
  - (e) Your negligence, breach of this Agreement or malicious or illegal act;
- Except to the extent that such things are caused by Our negligence or Our breach of this Agreement.
- 9.3 You agree that We may invoice You for any amount in respect of which You are liable to indemnify Us and the amount stated in the invoice shall be a debt due and payable by You to Us in accordance with these Terms.
- 9.4 Each indemnity in this Agreement is a continuing obligation, separate and independent from any other obligation and survives the termination, completion or expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.
- 10. Installation Training and Start-Up**
- 10.1 You are responsible for installation, training and start-up of the Product, unless otherwise agreed by Us in writing.
- 10.2 Product supplied by Us shall be installed in accordance with Our recommended installation procedures and We shall not be liable in respect of any damage occasioned to the Product by reason of You or any other Person failing to install the Product in accordance with Our recommended installation procedures.
- 10.3 If You complete Your own site commissioning of software without Our assistance:
- (a) The scope of works for any Supply is reduced to the supply of office based engineering services only;
  - (b) Hardware supply is provided as per the manufacturers terms and conditions including, but not limited to, that of warranty; and
  - (c) You assume all responsibility and liability for the integration of the Services provided by Us including, but not limited to, I/O testing, functionality testing and all workplace health and safety associated with the works and We will not be liable for any failure howsoever occurring due to improper commissioning.
- 11. Technical Assistance**
- 11.1 If required, We will provide a technical officer for field service, start-up/commissioning, training and installation support, charged at Our then prevailing labour rate per hour worked whilst on site. You must pay reasonable travel and accommodation costs of any such technical officer at cost plus 12%. Travelling time to and from site will also be charged at Our then prevailing charge per hour of travel, or part thereof.
- 12. Remobilisation Costs**
- 12.1 Unless agreed in writing, any testing required will be carried out as per Our standard test sheets. Should the site testing be postponed or result in multiple site trips due to a reason beyond Our direct control, additional costs associated with a project review prior to site attendance and remobilisation may be imposed.
- 13. Licenses**
- 13.1 Saunders Automation will obtain and provide all approvals, licenses and permits which Saunders Automation needs to manufacture the Product and the Customer is responsible for all approvals, licenses and permits needed to operate the Product after delivery. The Customer is also responsible for obtaining any necessary import approvals, licenses and permits.
- 14. Our Warranties and Liability**
- 14.1 We warrant that any Supply that We make to You will be made with due care and skill in a competent and workmanlike manner and in accordance with generally applicable industry standards.
- 14.2 Where the *Australian Consumer Law* applies You may have the benefit of guarantees which cannot be excluded, however, to the extent permitted by law, all express or implied warranties, representations, guarantees, terms and conditions other than those expressly contained in this Agreement are expressly excluded from this Agreement.
- 14.3 Where the manufacturer of any Product provides a warranty in respect of those Product We will do Our best to ensure that You have the full benefit of any such warranty.
- 14.4 Except as otherwise required by law, Our liability to You in relation to any Supply is limited to the cost paid by You for that Supply or alternatively, an obligation to repair or resupply. To the fullest extent permitted by law, We will not be liable in any event whether in tort (including negligence), contract or otherwise for any loss of profits or any consequential, indirect or special damage, loss, injury or death of any kind suffered by You or any other person.
- 14.5 You warrant that in deciding to acquire any Product or Service You have undertaken or will independently undertake to investigate any recommendations and to carry out such tests and inspections as You consider necessary to satisfy You that the Product is suitable for Your purposes or the purposes of any proposed or actual purchaser from You.
- 14.6 We will not be liable for any delay in or failure to perform any of Our obligations under this Agreement to the extent that such delay or failure is due to events or circumstances beyond our reasonable ability to control, so long as We have taken



reasonable steps to mitigate the impact of such events or circumstances.

#### **15. Customer's Materials**

15.1 If We use Your materials or goods in the manufacture of Product or provision of Services We accept no responsibility and shall not, in any way be liable to You for any damage done or caused to such materials or goods.

#### **16. Design**

16.1 You accept full responsibility for any design provided by You and undertake to indemnify Us against any claim arising in respect thereof.

16.2 You warrant that any Product manufactured, constructed or supplied by Us which is based in whole or in part upon designs, drawings or specifications supplied to Us by You or on Your behalf shall not infringe any letters patent, registered designs or other intellectual property rights.

#### **17. Property Protection**

17.1 You must not reverse-engineer, disassemble, decompile, reproduce, or permit any other person to reverse-engineer, disassemble, decompile or reproduce the Product except as may be necessary to repair or service or maintain the Product and You agree that if You or any person associated with You or under Your direct or indirect control makes any product the same as or similar to the Product in breach of these or any other terms agreed between Us and You that such property is immediately transferred to Us and immediately becomes Our property and You hereby authorise Us to act as Your agent to take possession of any such product.

17.2 You agree that the intellectual property in the Product or any part of the Product is and remains Our property and that You may only use or deal with the Product for the purpose represented to You unless otherwise agreed in writing.

17.3 You agree to keep Our Confidences confidential.

#### **18. PPSA**

18.1 In this clause, the terms "security agreement" and "security interest" have the same meaning as that given to them by the PPSA.

18.2 You agree that You will, if requested by Us, sign any documents, provide any information or do anything else We request, to ensure that any security interest created in Our favour by these Terms is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.

18.3 You agree that, until any security interest created in Our favour by these Terms has been perfected, You will not register or permit to be registered or enter into any security agreement that allows any other party to register a security interest that may adversely affect the priority or enforceability of Our security interest.

18.4 In relation to security interests that are not used predominantly for personal, domestic or household purposes, section 115 of the PPSA allows the parties to contract out of certain provisions of the PPSA ("Removable Provisions"). To the extent that the Removable Provisions would have the effect of conferring rights on You or imposing obligations on Us that You or We would not otherwise have had, they are hereby contracted out of and will not apply to any Agreement or transaction between You and Us or to any security interest created in Our favour. You also waive Your right to receive a verification statement under section 157 of the PPSA or any notices under any of the provisions listed in section 144 of the PPSA.

18.5 Notwithstanding section 275 of the PPSA, You and We agree to keep confidential all information of the kind referred to in section 275, unless compelled by law to disclose such information.

#### **19. General**

19.1 Where You are a partnership or trustee You warrant that You have the right to be fully indemnified out of trust or partnership assets in relation to any liability incurred by You in connection with any Supply provided by Us to You.

19.2 This Agreement is governed by the laws of the State of Queensland and You agree to submit to the non-exclusive jurisdiction of the courts in the State of Queensland. You agree that proceedings may be commenced in any court in Queensland and consent to that court having jurisdiction, notwithstanding that it may not otherwise have jurisdiction, but for this clause.

19.3 If any provision of this Agreement is illegal, void or unenforceable, it will severed from this Agreement and the remainder of the Agreement will remain valid and enforceable.

19.4 No amendment or variation to these Terms or this Agreement will be effective unless it is in writing. We may vary these Terms at any time and any such variation will be incorporated into this Agreement with effect from the date on which We notify You of such variation.

19.5 Any provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

19.6 We may at any time assign Our rights and interests or novate Our duties and obligations (in whole or in part) under this Agreement and You hereby consent to any such assignment or novation by Us. You may not assign or attempt to any of Your rights or obligations under this Agreement without Our prior written consent in writing, which consent may be given or refused at Our absolute discretion and subject to such terms as We see fit.

19.7 Notices in connection with this Agreement may be given in the manner permitted by addressing and delivering or transmitting the notice to the address or contact number listed:

- (a) for Us, as set out in this Agreement or otherwise notified by Us to You from time to time; or
- (b) for You, as stated in Your Application or otherwise notified by You to Us from time to time.

19.8 Notices shall be deemed to have been received at the time they would normally be received in the ordinary course according to the method of delivery used, except where the sender receives information or becomes aware or ought reasonably to be aware of circumstances that would indicate to a reasonable person that the notice had not been received.

19.9 Neither party shall be liable for any default or delay due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

19.10 Any failure by Us to enforce any clause of this Agreement, or any forbearance, delay or waiver of Our rights or indulgence granted by Us to You will not be construed as a waiver of Our rights under this Agreement.

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