

These terms and conditions (Conditions) govern the acquisition of the Supplies from the Supplier by the Buyer pursuant to the Purchase Order.

1. Definitions

"Blanket Purchase Order" means a Purchase Order specified as a "blanket" or "umbrella" Purchase Order or a Purchase Order identifying a budgeted amount of Supplies which might be purchased by the Buyer.

"Business Day" means a day which is not a Saturday, Sunday or public holiday in the State or Territory where the Supplies will be provided.

"Buyer" means FUJIFILM Business Innovation Australia Pty Ltd (*formerly known as Fuji Xerox Australia Pty Ltd*), ABN 63 000 341 819, unless another entity is expressly identified as the buyer in the Purchase Order, in which case the Buyer is that other entity.

"Buyer Requirements" means:

- (1) the Supplies are delivered in full accordance with the Purchase Order, including quantity;
- (2) the Supplies are in strict conformance with the Specifications;
- (3) the Supplies are consistent with any representations made by the Supplier to the Buyer prior to issuing the Purchase Order;
- (4) the Supplies are of an acceptable, merchantable quality and fit for purpose normally acquired, or if applicable, made known to the Supplier by the Buyer prior to issuing the Purchase Order;
- (5) the Supplies are in accordance with any Law;
- (6) the Supplies do not infringe any third party rights;
- (7) in the case of Services:
 - a. the Services will be performed with due skill and diligence in accordance with industry best practice or if there is no establish industry practice, reasonable practice, by appropriately trained and experienced personnel with all necessary qualifications; and
 - b. the Services will be performed in accordance with any Milestone;

- (8) in the case of Goods:
- a. the Goods conform with the Specifications for the Warranty Period;
 - b. the Goods are delivered complete, undamaged and in accordance with any Milestone;
 - c. Goods are the same as any sample provided or demonstration given by the Supplier prior to the Purchase Order being issued;

“Confidential Information” means all information and data, in any form, regardless of how the information is stored by or delivered to, learnt or created by the Supplier before, prior to or after the date of issue of the Purchase Order relating to the business, technology or other affairs of the Buyer, any of its related bodies corporate and any of its suppliers, customers , or affiliates but does not include information which is in or becomes part of the public domain other than through breach of the Conditions or an obligation of confidence owed to Buyer or any related body corporate.

“Goods” means any goods, including any software, specified in the Purchase Order and any deliverable or work product produced by the Supplier for the Buyer in the course of performing Services.

“GST” has the meaning given to the expression “tax” as it appears in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Insolvency Event” means the Supplier becomes insolvent, is placed under administration or is bankrupt, is unable to pay their bills as they come due, or such other event occurs which the Buyer reasonably considers is similar to insolvency, administration or bankruptcy.

“Intellectual Property Rights” means all current and future, registered and unregistered rights in Australia and throughout the world in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

“Law” means any statute, ordinance, code or other law including regulations under them and any code of practice, practice notes, guidelines, rules, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law.

“Liability” means any loss, liability, cost, outgoings or expense.

“Milestones” means any dates, time and service level specified in the Purchase Order.

“Price” means the price, fee or charge set out in the Purchase Order in relation to a Supply, and in the case of an Umbrella Purchase Order, refers only to the Supplies subject to the Supplies Request.

“Privacy Act” means any Law which relates to the protection on personal information.

“Policy” means any Buyer policy, procedure, work instruction, code or guide which is advised by Buyer to Supplier in writing from time to time.

“Purchase Order” means a standard purchase order issued by the Buyer.

“Services” means the services specified in the Purchase Order (if any).

“Specific Purchase Order” means any Purchase Order which is not a Blanket Purchase Order.

“Specifications” means the manufacturer’s published specifications, any written statement of requirements provided to the Supplier by Buyer; any particulars included and any documents cross referenced in the Purchase Order.

“Supplier” means the supplier or seller specified in

the Purchase Order. **“Supplies”** means the Goods

and Services.

“Supplies Request” has the meaning given in clause 2.1(b).

“Valid Invoice” means a tax invoice which:

- (a) is in accordance with the GST Law;
- (b) accurately describes the Supplies and the Price;
- (c) relates to Supplies which are provided in full accordance with the Conditions, including but not limited to in conformance with the Buyer Requirements; and
- (d) quotes the Purchase Order number.

“Warranty Period” means 12 months from the date of delivery or such other warranty period specified in the Purchase Order.

2. Purchase Orders

- 2.1 If the Purchase Order is a Blanket Purchase Order, then:
 - (a) the Purchase Order does not of itself obligate the Buyer to acquire Supplies from the Supplier;
 - (b) the Purchase Order provides a maximum nominated amount of Supplies which and / or the maximum term during which the Buyer may request Supplies pursuant to an additional ordering process specified in the Purchase Order (**Supplies Request**); and
 - (c) in the absence of a valid Blanket Purchase Order and the related Supplies Request in respect of the Supplies, the Buyer has no obligation to acquire Supplies from the Supplier, and the Supplier must not provide the Supplies to the Buyer.
- 2.2 If the Purchase Order is a Specific Purchase Order, then the Purchase Order:
 - (a) creates a binding obligation on the Supplier to provide the Supplies when it is received by the Supplier; and
 - (b) in the absence of a valid Specific Purchase Order in relation to the Supplies:
 - (i) the Buyer has no obligation to acquire the Supplies from the Supplier; and
 - (ii) the Supplier must not provide the Supplies to the Buyer.
- 2.3 In the event of a conflict between the terms of the Purchase Order and the Conditions, the Conditions shall prevail unless the relevant clause of the Conditions is expressly stated in the Purchase Order to be amended or removed by the Purchase Order.
- 2.4 Unless the Purchase Order expressly states otherwise the Buyer is free to acquire the same or similar Supplies from any person.

3. Delivery

- 3.1 The Supplier must:
 - (a) deliver, and if necessary, install and configure, the Goods; and
 - (b) perform the Services,at the Location, in accordance with the Milestones and the Buyer's reasonable directions.

3.2 Buyer may, at any time prior to delivery of Goods, or the commencement of the performance of the Services, and without Liability to the Supplier (other than the requirement to pay the Price for any increase in the quantity of Supplies under paragraph (d)):

- (a) vary the Location;
- (b) vary the Milestones;
- (c) terminate or suspend the Purchase Order or Supplies Request; or
- (d) vary the quantity or composition of Goods or Services,

set out in the Purchase Order, by advising the Supplier in writing, and in the case of termination or variation under clause 3.2(c), the Supplier must refund any prepayments made in respect of Supplies which have not been or will not be provided.

4. Title, Risk and Quality of Supplies

- 4.1 Unless otherwise specified in the Purchase Order, title and physical risk in Goods passes to the Buyer upon delivery.
- 4.2 The Buyer may, at its option, inspect or test the Supplies to determine if the Supplies meet the Buyer Requirements.
- 4.3 Without limiting any other rights it may have at law, if the Buyer, acting reasonably, upon inspecting, testing or using the Supplies, determines that the Supplies are not in accordance with the Buyer Requirements, the Buyer may, at its option:
 - (a) require the Supplier to, at the Supplier's cost, remedy the deficiency in the Supplies and redeliver the Supplies to the Buyer;
 - (b) itself remedy the deficiency in the Supplies and recover the reasonable costs of doing so from the Supplier; or
 - (c) reject the Supplies and terminate the Purchase Order (and where applicable the Supplies Request) in whole or in part, and obtain a full refund of any amount already paid pursuant to the cancelled Purchase Order or part thereof.

- 4.4 The rights set out in clause 4.3 are cumulative, the Buyer may rely upon a provision in clause 4.3 and if the exercise of that right is not successful in overcoming the deficiency, the Buyer may rely upon another right in clause 4.3
- 4.5 Inspection, testing and use by Buyer without identifying a defect in the Supplies or a failure to inspect or test, does not extinguish any rights of the Buyer or limit the obligation on the Supplier to perform in accordance with the Conditions.
- 4.6 If a Purchase Order or Supplies Request relating to Goods is terminated under clause 4.3(c):
 - (a) the Buyer may reject the Supplies provided or to be provided under any other Purchase Order, where the other Supplies form part of a system or are necessary to enjoy the benefit of the Supplies; and
 - (b) terminate the other Purchase Order and if already paid obtain a full refund; and
 - (c) providing a full refund is received from the Supplier, the Buyer will return the Goods to the Supplier.
- 4.7 The Supplier must notify the Buyer of all relevant information regarding any potential hazards, including any hazards in transport, handling or use of the Goods or receiving the Services.
- 4.8 A Material Safety Data Sheet (MSDS) written in English, must accompany, the first delivery of materials and each first delivery following a change to the materials MSDS. MSDS must thereafter be provided by the Supplier upon the Buyer's request

5. Price and Payment

- 5.1 In consideration for the provision of the Supplies, and subject to any rights under the Conditions or the Purchase Order, the Buyer shall pay the Supplier the Price.
- 5.2 Unless otherwise specified in the Conditions or the Purchase Order:
 - (a) the Price shall be inclusive of all Supplier costs, expenses, tariffs, outgoings and taxes including any costs of packaging, packing, shipping, carriage, insurance and delivery;
 - (b) the Supplier shall not invoice the Buyer prior to delivery; and
 - (c) the Buyer shall pay the Supplier the Price within 45 days from the later of: the

date of a Valid Invoice or the date of receipt of a Valid Invoice from the Supplier. In the absence of a Valid Invoice, the Buyer has no obligation to pay the Supplier.

- 5.3 Payment of the Price by Buyer to the Supplier is without prejudice to any rights the Buyer may otherwise have at Law.

6. **GST**

- 6.1 Unless otherwise expressly stated in the Purchase Order, all consideration to be provided under the Purchase Order and the Conditions is inclusive of GST.
- 6.2 Where consideration stated to be exclusive of GST, the Supplier is entitled to recover GST at the prevailing rate providing that Supplier is duly registered for GST and it provides the Buyer with a Valid Invoice.
- 6.3 Where the Buyer is expressly required to pay for or reimburse an expense or outgoing of the Supplier, the amount to be paid by the Buyer is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing to which the Supplier is entitled plus any GST payable by the supplier in respect of the supply to the Buyer.
- 6.4 Where at any time an adjustment event arises in respect of any supply made by the Supplier, the Supplier must provide the Buyer with an adjustment note in respect of the adjustment event as soon as practicable after the occurrence of the adjustment event.

7. **Software**

- 7.1 This clause 7 shall apply only to software supplied by the Supplier.
- 7.2 The definition of "Goods" shall include the physical media on which Software which is the subject of the relevant Purchase Order is provided.
- 7.3 The Supplier grants Buyer, or will procure the grant to Buyer, and its related bodies corporate, a worldwide, perpetual, non-exclusive, non-transferable licence to reproduce and use the software, including the making of a reasonable number of back up copies.
- 7.4 The Supplier represents, warrants and undertakes that:
- (a) the Software will be compatible with and will not adversely affect the operation of any software or equipment owned or operated by Buyer;

- (b) the Supplier has, using the most up-to-date software available, tested for (and deleted) all commonly known viruses in the software and for all viruses known by the Supplier at the date of this Purchase Order; and
- (c) the software does not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or harmful components.

8. Documentation

- 8.1 The Supplier must provide such Documentation as is reasonably necessary for the Buyer to use and enjoy the benefit of the Supplies.

9. Personnel and Subcontractors

- 9.1 The Supplier shall be and shall remain liable for any and all Liabilities howsoever arising out of or in connection with the Supplier's employees, agents or subcontractors.
- 9.2 The Buyer must not subcontract its obligations under the Purchase Order without the prior written approval of Buyer.
- 9.3 Buyer may on reasonable grounds require that one or more of the Supplier's employees, agents or subcontractors be removed and replaced to the reasonable satisfaction of Buyer.

10. Buyer Requirements

- 10.1 The Supplier represents, warrants and covenants to Buyer that:
- (a) the Supplies meet the Buyer Requirements;
 - (b) the Supplier will comply with any lawful or reasonable instructions of the Buyer; and
 - (c) the Supplier will comply with Buyer Policies, including Policies relating to procurement, occupational health and safety, information security, and sustainability.

11. Liability and Indemnity

- 11.1 To the maximum extent permitted by law, Buyer shall not be liable to the Supplier for any Liability which is: indirect, special, punitive or consequential loss or damage; a loss of opportunity or goodwill; a loss of revenue or profit; a loss of anticipated savings or business; and any costs or expenses suffered or incurred by the Supplier in connection with the foregoing.

- 11.2 The Supplier shall indemnify Buyer for all Liabilities (including legal fees and disbursements on a solicitor – client basis) suffered or incurred by Buyer in connection with, arising from or as a result of the following:
- (a) any negligence, willful default, unlawful or wrongful act or omission of the Supplier, its employees, sub-contractors or agents;
 - (b) any breach of clause 14 or clause 15 by the Supplier; and
 - (c) any Liability arising from or in connection with any third party claim relating to the Supplies or the acts or omissions of the Supplier.

12. Insurance

- 12.1 The Supplier must obtain, and keep in force for 7 years from the date of the Purchase Order:
- (a) public liability insurance for a minimum of \$20 million per occurrence;
 - (b) workers compensation insurance in accordance with statutory limits; and
 - (c) any other insurances required by law or that a prudent supplier in the same industry as the Supplier would obtain, including:
 - (i) a minimum of \$10 million of professional indemnity per occurrence in the event that the Supplies include advice or consulting or similar professional services; and
 - (ii) a minimum of \$10 million of IT liability insurance per occurrence, in the event the Supplies include the supply of information technology Goods or Services.
- 12.2 If requested by the Buyer, the Supplier must provide the Buyer with a certificate of currency for each insurance policy required under clause 12.1.

13. Termination

- 13.1 Without prejudice to any other right, Buyer may terminate the Purchase Order by written notice to the Supplier without any Liability on the part of Buyer if:
- (a) the Supplier breaches any Condition and, such breach is incapable of remedy or is capable of remedy but the Supplier fails to remedy the breach within 10 days; or
 - (b) the Supplier becomes subject to an Insolvency Event.

- 13.2 Buyer may immediately upon giving notice terminate the Purchase Order (and if applicable, the Supplies Request) for convenience.
- 13.3 Where the Purchase Order is terminated under clause 13.2, Buyer shall only be liable to pay for any Goods or Services delivered as at the date of receiving the notice, except in relation to Goods are designed or manufactured specifically for the Buyer under the Purchase Order, in which case the Buyer shall be liable for reasonable costs associated with procuring parts or materials and work performed in relation to the manufacturing of the Goods as at the receipt of notice of termination, after all efforts are made by the Supplier to mitigate such costs and losses, and providing that the amount does not exceed the Price.

14. Intellectual Property Rights and Software

- 14.1 Unless otherwise specified in the Purchase Order:
 - (a) the Supplier retains all title and proprietary interests to all its pre-existing Intellectual Property Rights;
 - (b) all new Intellectual Property Rights included in the Supplies vest in the Buyer; and
 - (c) Where the Buyer retains ownership over its Intellectual Property Rights, Supplier grants Buyer its Related Bodies Corporate a non-exclusive, irrevocable and royalty free licence to reproduce, modify, exploit, and adapt the Intellectual Property Rights included in the Supplies (other than software) for Buyer's business purposes for the purpose of obtaining the benefit of the Supplies, and without further reference to the Supplier.

15. Confidentiality and Privacy

- 15.1 The Supplier agrees:
 - (a) to use Confidential Information solely in the proper performance of its responsibilities under the Purchase Order;
 - (b) to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information; and
 - (c) not to copy or remove from Buyer's premises any Confidential Information without Buyer's consent.

- 15.2 The Supplier must not disclose Confidential Information to any person except:

- (a) Representatives who require it for the purposes of the Purchase Order;
 - (b) with the prior written consent of Buyer; or

(c) to the extent the Supplier is required to do so by Law or a stock exchange.

15.3 The Supplier must:

- (a) ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 15.2; and
- (b) immediately notify Buyer of any suspected or actual unauthorised, access, use, copying or disclosure of the Confidential Information.

15.4 On Buyer's request, the Supplier must immediately deliver to Buyer all documents or other materials containing or referring to the Confidential Information which are in the Supplier's possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Supplier under clauses 15.2(a) or (b).

15.5 The Supplier must not make any statement, press release or other announcement relating to this transaction without Buyer's prior written consent.

15.6 The Supplier must: comply with the Privacy Act and any relevant Policy in relation to any Personal Information disclosed to or collected by the Supplier; and not do or omit to do anything which causes the Buyer to breach its obligations under the Privacy Act.

16. Entire Agreement and Variation

16.1 The Purchase Order and the Conditions contain the entire agreement between the parties and no variation shall be effective unless in writing and signed by both parties or expressly set out in the Purchase Order issued by the Buyer.

17. Assignment and Novation

17.1 The Supplier must not assign, novate or otherwise deal with any of its rights or obligations under this Purchase Order without the prior written consent of Buyer.

17.2 Buyer may novate, assign or otherwise deal with any of its rights or obligations under this Purchase Order without obtaining the Supplier's consent. The Supplier will execute all documents and do all things reasonably required by Buyer to give effect to any assignment or novation contemplated by this clause 17.2.

18. Survival and Severance

- 18.1 The following provisions survive the performance or termination of the Purchase Order:
10-11 and 14-20 (inclusive).
- 18.2 If any provision is or becomes illegal, invalid or unenforceable in whole or in part, such provision or part shall to that extent be deemed not to form part of this agreement and shall not affect the legality, validity or enforceability of the remainder of this agreement.

19. Waiver

- 19.1 Any failure or delay by Buyer to exercise or enforce any right shall not be considered to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

20. Governing Law and Jurisdiction

- 20.1 This Purchase Order is governed by and construed in accordance with the laws of New South Wales, Australia.
- 20.2 The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales and courts which have jurisdiction to hear appeals from any of those courts.