

TERMS AND CONDITIONS OF SUPPLY

These Terms apply where SAGE Automation Pty Ltd (ABN 59 104 119 833) (**Supplier**) supplies Goods and/or Services to a Client.

1. Definitions

In these Terms:

Agreement means the Agreement for the supply of the Goods and/or Services between the Supplier and the Client which comprises these Terms and the Proposal to the exclusion of all other terms and conditions;

Australian Consumer Law means *Schedule 2 of the Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts;

Business Day means any day which is not a Saturday, Sunday or public holiday in Adelaide or the State in which the Site is located;

Confidential Information means any information or data that is by its nature confidential, is designated by a party as confidential, or that a party ought reasonably to know is confidential and which is disclosed, made available, communicated or delivered to a party (or any of its Representatives) directly or indirectly in connection with the Agreement and includes trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the party's business, but excludes any information that is in or becomes part of the public domain otherwise than through a breach of these Terms or an obligation of confidence owed to the other party;

Consequential Loss means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;

Consumer has the meaning given to it by section 3 of the Australian Consumer Law;

Consumer Guarantee means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law that cannot lawfully be excluded;

Client means the person, entity, firm or corporation that acquires Goods and/or Services from the Supplier, whose details are set out in the Proposal and includes the Client's permitted assigns and successors;

Defective Goods means Goods that are defective in design, performance or workmanship;

Defective Services means Services that are defective in performance;

Fees means the fees and charges payable for the Goods and/or Services to be provided by the

Supplier to the Client, as specified in the Proposal and any other quotation issued by the Supplier and accepted by the Client;

Force Majeure means an event or circumstance beyond the control of the party affected which prevents that party from complying with obligations under the Agreement (except any obligation to pay money), or war, embargo, contamination, and acts or threats of terrorism but if and only to the extent that:

- (a) such circumstance, despite the exercise of reasonable diligence and the observance of best practice, cannot be prevented, avoided or removed by the party affected; and
- (b) such circumstances materially and adversely affect the ability of the party to perform its obligations under this agreement; and
- (c) such party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the party's ability to perform its obligations under this agreement and to mitigate the consequences;

Goods means the goods supplied by the Supplier to the Client (if any) at the Client's request;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means the happening of any of these events:

- (a) a party suspends payment of its debts generally;
- (b) a party is or becomes unable to pay its debts when they are due, or is or becomes insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (c) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) a receiver, receiver and manager or similar official is appointed over or in respect of any of the assets or undertakings of a party;
- (e) a liquidator or provisional liquidator is appointed in respect of a party;
- (f) an administrator is appointed in respect of a party;
- (g) a trustee is appointed in respect of any of the assets or undertaking of a party;
- (h) an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the

purpose of an amalgamation or reconstruction which has the other party's prior consent;

- (i) a party goes bankrupt; or
- (j) a party ceases, or threatens to cease, to carry on business;

Intellectual Property Rights includes all rights throughout the world in relation to patents, copyright (including moral rights), designs, registered and unregistered trademarks, trade secrets, know-how, confidential information and all other intellectual property and any right to register those rights, whether created before or after the date of the Agreement and in all cases for the duration of those rights and any renewal;

Loss means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise;

PPS Act means the *Personal Property Securities Act 2009* (Cth);

Proposal means the proposal issued by the Supplier for the supply of a Support Service Package and that is accepted by the Client;

Representatives means officers, directors, employees, agents, representatives, contractors and/or subcontractors of the relevant party (except that a party to the Agreement and its officers, directors, employees, agents, representatives, contractors and subcontractors are not "Representatives" of the other party to the Agreement);

Services mean the specific Service Package described in a Proposal to be delivered by the Supplier, and includes the performance of all incidental or other services, and the provision of all materials and equipment, necessary to allow or assist the performance of the Services;

Service Package means the Silver, Gold, Platinum and Accelerate service packages offered by the Supplier;

Service Term means the period during which the Customer requires, and the Supplier agrees to provide, the Goods and/or Services, as specified in the Proposal, and if no such period is specified, means the period commencing on the date the Proposal is accepted by the Client and continuing until the Agreement is terminated;

Site means the address(es) nominated by the Client in respect of which the Services are to be supplied, as specified in the Proposal; and

Terms means these terms and conditions.

2. Agreement

- (a) The Agreement includes all those statutory rights conferred on the Client which the Supplier is not capable of excluding, restricting or modifying, including statutory rights conferred on the Client

under the Australian Consumer Law where the Client is a Consumer.

- (b) Subject to clause 2(a), the parties acknowledge and agree that these Terms and the Proposal take precedence over all other conditions of supply, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise).
- (c) The Client indicates its acceptance of the Agreement by:
 - (i) signing and returning the Proposal and these Terms; or
 - (ii) performing an act that is done with the intention of adopting or accepting the Agreement, including by requesting the provision of Services following delivery of the Proposal by the Supplier; or
 - (iii) oral acceptance.
- (d) The Client warrants that it does not intend to use the Goods or Services predominantly for personal, domestic or household purposes.

3. Duration of Agreement

The Agreement commences on the date specified in the Proposal and continues for the Service Term, subject to clause 16.

4. Fees and Payment

- (a) All fees, charges and rates specified in the Proposal are in Australian dollars and except as otherwise expressly stated, are exclusive of GST, delivery charges, and any other sales, value added or similar tax.
- (b) The Client will pay the Fees to the Supplier in accordance with the payment terms set out in the Proposal.
- (c) Time for payment of the Fees is of the essence and will be stated on the Supplier's invoice. If the time for payment is not specified, the Client must pay the Fees no later than 30 calendar days after receipt of a correctly rendered tax invoice.
- (a) The Client must pay the Fees using one of the following payments:
 - (i) credit card (plus any charges that may be applicable); or
 - (ii) direct debit; or
 - (iii) bank transfer; or
 - (iv) any other methods as agreed to between the Client and the Supplier.
- (d) No amount owing by the Client to the Supplier may be offset against any amount owing to the Client from the Supplier under the Agreement or on any other account whatsoever
- (e) Without prejudice to any other rights or remedies of the Supplier, if the Client fails to make (whether in full or in part) any payment required under the

Agreement on or before the due date for payment, then:

- (i) the Client must pay to the Supplier interest on the unpaid amount at 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Supplier's primary financial institution from time to time; and
 - (ii) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Client upon demand by the Supplier.
- (f) If the Supplier takes steps or action to recover any amount due to it the Client will be responsible for all Losses incurred by the Supplier in recovering the monies due.

5. Delivery of Goods

- (a) The Supplier will use all commercially reasonable efforts to deliver the Goods by the date (if any) requested by the Client and in the absence of any date, within a reasonable time.
- (b) The failure of the Supplier to deliver the Goods by any date requested by the Client does not entitle either party to treat the Agreement as repudiated.
- (c) Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of the Agreement.
- (d) Except where the Supplier's liability may not be excluded under the Australian Consumer Law, the Supplier is not liable for any Loss due to the failure by the Supplier to deliver the Goods (or any of them) promptly or at all, other than to refund any Price paid by the Client where the Goods are not delivered at all.

6. Title and Risk

- (a) Risk in the Goods passes to the Client upon the Goods being delivered to the Site.
- (b) Title to the Goods passes to the Client on payment in full of the Fees owing for the Goods.
- (c) Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Client:
 - (i) legal title and property in all Goods supplied under the Agreement remain vested in the Supplier and do not pass to the Client; and
 - (ii) the Client acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds of sale until title passes to the Client in accordance with this clause 6; and
 - (iii) the security interest arising under this clause 6 attaches to the Goods when the Client obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 6 attaches at any later time.

7. Descriptions

- (a) No warranty or guarantee is given by the Supplier whatsoever regarding the quality, condition, specifications, merchantability, or fitness for purpose of the Goods, except as required under the Australian Consumer Law.

8. Defective Goods

- (a) The Client must, as soon as possible after delivery, check whether the Goods were damaged or defective when delivered.
- (b) The Goods will be considered to have been delivered in good condition unless the Client gives the Supplier notice of the damage or defect within five Business Days after delivery.

9. Supply of Services

- (a) The Supplier will use its reasonable efforts to provide the Services with due care and skill, using suitably qualified Representatives and resources, and in accordance with best industry practice.
- (b) Without limiting any entitlements of the Client under the Australian Consumer Law, to the extent permitted by law, the Client must, as soon as possible after the Services have been provided give the Supplier notice of any Defective Services within five Business Days after the relevant Service has been provided.

10. Site access

- (a) The Client will ensure that the Supplier's Representatives are given such access to the Site as is necessary for the Services to be properly performed, and acknowledges that insufficient Site access may affect the manner and extent to which the Services can be provided.
- (b) The Supplier will ensure that its Representatives comply with such requirements for accessing and attending the Site as may be notified by the Client, including any occupational health and safety requirements.

11. Insurance

The Client must, at all times during the Service Term, maintain insurances in respect of such risks that a reasonable, prudent person carrying on its business would be likely to insure against, with reputable insurers.

12. Claims and limitation of liability

- (a) The Australian Consumer Law provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited. The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude such Consumer Guarantees.
- (b) The Client must promptly inform the Supplier of all complaints or claims relating to any of the Goods or Services.
- (c) Subject to clauses 12(a) and 12(d), the Supplier's liability for any Loss suffered or incurred by the Client, howsoever caused, which arises out of or in

connection with the supply of the Goods or Services under the Agreement:

- (i) in the case of Goods, is limited to:
 - (A) the replacement of the Goods or the supply of equivalent goods;
 - (B) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (C) where the Client is not a Consumer, provision of a credit; and
- (ii) in the case of the Services, is limited to:
 - (A) the supplying of the Services again;
 - (B) the payment of the cost of having the Services supplied again; or
 - (C) where the Client is not a Consumer, provision of a credit; and
- (iii) in any other case, is excluded such that the Supplier shall not be liable to the Client, except to the extent that the Loss suffered or incurred by the Client was directly caused by an act or omission of the Supplier.
- (d) The Supplier's liability in respect of a breach of or a failure to comply with an applicable Consumer Guarantee will not be limited in the way set out in clause 12(c) if:
 - (i) the Goods or the Services supplied are goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the Australian Consumer Law;
 - (ii) it is not 'fair or reasonable' for the Supplier to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or
 - (iii) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.
- (e) Subject to clause 12(a):
 - (iv) the Supplier excludes any liability for Consequential Loss;
 - (v) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and/or Services; and
 - (vi) the Supplier is not liable to the Client for any Loss which the Client suffers, incurs or is liable for in connection with supply of the Goods or Services under the Agreement, except in accordance with this clause 12.

13. Intellectual Property Rights

The Supplier acknowledges that the Intellectual Property produced in the performance of the Services remains the property of the Client.

14. Records and Information

The Client will keep full and accurate records relating to the performance of its obligations under the Agreement. The Supplier will be entitled to inspect and copy such records upon reasonable notice.

15. GST

- (a) Words or expressions used in this clause 15 that are defined in the GST Act have the same meaning given to them in that Act.
- (b) Unless otherwise stated, any amount specified in the Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- (c) If a party makes a taxable supply under the Agreement (**supplier**), then the recipient of the taxable supply (**recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- (d) Despite anything stated in this clause, the recipient is not obliged under the Agreement to pay the amount of any GST payable until the supplier provides it with a valid tax invoice for the taxable supply.
- (e) If an adjustment event arises in relation to a taxable supply made by a supplier under the Agreement, the amount paid or payable by the recipient pursuant to clause 15(c) will be amended to reflect this and a payment will be made by the recipient to the supplier or vice versa as the case may be.
- (f) If a third party makes a taxable supply and the Agreement requires a party to the Agreement (the **Payer**) to pay for, reimburse or contribute to (**Pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the Payer must Pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

16. Termination

- (a) Either party (**Terminating Party**) may immediately terminate the Agreement by written notice to the other party if the other party (**Defaulting Party**):
 - (i) breaches the Agreement in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by the Defaulting Party within ten Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or

- (ii) suffers an Insolvency Event.
- (b) The Client must, within five Business Days after the date of expiry or termination of the Agreement pay the Supplier all amounts it owes the Supplier, whether due at that time or not.
- (c) Each party must return or destroy, as requested by the other party, all Confidential Information of the party in its possession or control, upon expiry or termination of the Agreement.

17. Confidential Information

Each party may only use the Confidential Information of the other party for the sole purpose of implementing the Proposal and receiving the benefit of the Goods or Services (as the case may be), must treat all Confidential Information as confidential and must not, without the prior written consent of the other party or unless required to be disclosed by the Agreement or by operation of law, disclose the Confidential Information of the other party or permit its disclosure to any third person.

18. Force Majeure

- (a) A party will not be liable for any delay or failure to perform its obligations under the Agreement if the delay or failure is due to Force Majeure. In the case of Force Majeure, performance of the party's obligations will be suspended. The Supplier will only charge Fees for Goods or Services actually supplied during any such period
- (b) If the delay or failure exceeds 30 calendar days, either party may immediately terminate this agreement by giving notice to the other party.

19. PPSA

- (a) Unless a contrary intention appears, words or expressions used in this clause 19 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.
- (b) If at any time the Supplier determines that the Agreement (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Client must promptly, upon the Supplier's request, do anything (including signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
 - (i) provide more effective security over the relevant personal property;
 - (ii) ensure that any such security interest in favour of the Supplier:
 - (A) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
 - (B) ranks as a first priority security interest;

- (iii) enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
- (iv) enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.
- (c) All costs and expenses arising as a result of actions taken by either party pursuant to clause 19.1(b) will be for the account of the Client. The Client must pay the Supplier pursuant to this clause 1.1(c) within 5 days of a written request.
- (d) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under the Agreement, the Client agrees that the following provisions of the PPS Act will not apply:
 - (i) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Client;
 - (ii) section 121(4) (enforcement of liquid assets – notice to grantor);
 - (iii) section 125 (obligation to dispose of or retain collateral);
 - (iv) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Client;
 - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (vi) subsection 132(4) (statement of account if no disposal);
 - (vii) section 142 (redemption of collateral); and
 - (viii) section 143 (reinstatement of security agreement).
- (e) The Supplier does not need to give the Client any notice required under the PPS Act (including a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.
- (f) Neither party will disclose to a person or entity that is not a party to the Agreement information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available. The obligations of each party under this clause 1.1(f) are in addition to the obligations of the Client under clause 17.

20. Dispute Resolution

- (a) All disputes between the parties relating to the Agreement must be referred in writing to a Representative appointed by each party and the disputing parties shall work together diligently in

good faith to investigate and resolve the alleged issue or dispute.

- (b) In the event that any dispute is not resolved in accordance with the processes set out in clause 20(a) within 20 Business Days the parties agree to refer the dispute to a mediator to be mutually agreed, or in default of deed within 5 Business Days of a party requesting the others to agree a mediator, to be appointed by the President for the time being of the Law Society of South Australia Inc.
- (c) Mediation will be held in Adelaide, within 14 Business Days of the appointment of the mediator.
- (d) The parties will each bear their own costs of mediation, and will equally share the costs of the mediator, unless the mediator otherwise directs or the parties mutually agreed otherwise.
- (e) If mediation fails to resolve the dispute to the satisfaction of both parties, each party is free to commence legal proceedings to resolve the dispute.
- (f) Nothing in this clause is to be interpreted as preventing either party from obtaining interlocutory relief from an appropriate court if it is reasonably necessary to do so to protect the interests of that party.

21. Notices

- (a) Any notice given under the Agreement must be given in writing to the postal and email addresses specified in the Proposal in the case of the Client and to the following addresses in the case of the Supplier, marked to the attention of the National Service Manager as follows:
 - (i) Postal address – F22/6 MAB Eastern Promenade, 1284 South Road, Tonsley SA 5042; and
 - (ii) Email address – legal@gotosage.com
- (b) A notice or other communication is deemed given:
 - (i) if personally delivered, upon delivery;
 - (ii) if mailed to an address in Australia by regular post, 6 Business Days after the date of posting (whether received or not); and
 - (iii) if sent by email, at the time of sending provided that the sender receives confirmation the email has been successfully delivered to an email system accessible to the addressee (whether or not such confirmation is automated).

22. Anti-poaching

The Client agrees to pay the Supplier a permanent placement fee if it engages an employee of the Supplier (directly or indirectly) under any contract of service or contract for services, within 12 months of that employee providing services to the Client pursuant to this Agreement. The parties agree that the permanent placement fee will be an amount equal to 320 hours at the standard rate for the

employee as at the time that the employee is engaged by the Client.

23. General

- (a) The Agreement is governed by the laws in the State of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- (b) The Client may not assign the Agreement or any part of it without the Supplier's prior written consent. The Supplier may assign the Agreement or any part of it, and must, within a reasonable time thereafter, give notice of such assignment to the Client.
- (c) The Supplier may subcontract performance of its obligations under the Agreement or any part of it without notice at any time.
- (d) A reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- (e) In the Agreement, the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary.
- (f) If a provision in the Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from the Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of the Agreement.
- (g) A waiver of any right arising under the Agreement must be in writing and signed by the party granting the waiver. Any variation of the Agreement must be in writing and signed by the parties.
- (h) The Supplier and the Client are independent contracting parties and nothing in the Agreement makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.
- (i) Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Agreement, clauses 5(d), 6, 7, 8, 9, 12, 13, 15, 16(b), 16(c), 17, 19, 21, 22 and 23 survive the termination of the Agreement.