



Standard Terms and Conditions for Project Customers

SAGE Automation



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SAGE Automation Pty Ltd (ACN 104 119 833) (the “Contractor”) and the *Principal* adopt the provisions of the Australian Standard General Conditions of Contract for Design and Construction (AS 4902-2000), as amended below.

1. CONDITIONS OF CONTRACT

The agreement between the parties is comprised of:

- (a) the *Contractor’s Proposal*;
- (b) the General Conditions of Contract for Design and Construction (AS 4902-2000) as amended by this document; and
- (c) the Licensing Agreement contained in Appendix 1.

the “Contract”.

The *Contract* supersedes, without exception, any and all terms and conditions contained in or referenced within any purchase order or other document issued by the *Principal* to the *Contractor*.

2. SITE AMENITIES

The site amenities will be provided by the *Principal* to the *Contractor* at no cost.

3. SITE AND / OR SPECIAL ALLOWANCES

No provision has been included for any non-award based special or additional site allowances.

4. ANNEXURE PART E

1. Clause 1 of the General Conditions of Contract (AS4902-2000) is amended as follows:

Contractor’s Proposal means the proposal provided by the Contractor to the Principal in relation to the Works.

force majeure means an event or cause which is:

- an act of God, fire, flood, cyclone, tempest;
- war, including civil commotion and disobedience;
- any other event or cause not within the reasonable control of the Contractor.

The definition of “*qualifying cause of delay*” in clause 1 of the General Conditions of Contract is deleted and the following is inserted:

qualifying cause of delay means:

- any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);
- a breach of the Contract by the Principal;
- national industrial conditions;

- *inclement weather;*
- *legislative changes occurring after the date of this Contract;*
- *any delay caused by a municipal public or statutory authority; and*
- *a force majeure event.*

SOP Act means:

- *where the Works are located in New South Wales - the Building and Construction Industry Security of Payment Act 1999 (NSW);*
- *where the Works are located in Victoria - the Building and Construction Industry Security of Payment Act 2002 (Vic);*
- *where the Works are located in Queensland - the Building Industry Fairness (Security of Payment) Act 2017 (Qld);*
- *where the Works are located in Western Australia - the Construction Contracts Act 2004 (WA);*
- *where the Works are located in South Australia - the Building and Construction Industry Security of Payment Act 2009 (SA);*
- *where the Works are located in Tasmania - the Building and Construction Industry Security of Payment Act 2009 (Tas);*
- *where the Works are located in the Australian Capital Territory - the Building and Construction Industry (Security of Payment) Act 2009 (ACT); and*
- *where the Works are located in the Northern Territory - the Construction Contracts (Security of Payment) Act 2004 (NT).*

2. Clause 2 of the General Conditions of Contract shall be amended as follows:

- a. Clause 2.2(a)(ii) shall be amended by deleting the words *“and that such preliminary design is suitable, appropriate and adequate for the purpose stated in the Principal’s project requirements.”*
- b. A new clause 2.6 shall be inserted as follows:
 - (a) *The Contractor gives no warranty in respect of parts or products not manufactured by the Contractor and the Contractor’s liability in respect of such third party parts and products shall be limited to the express warranty provided by the manufacturer or supplier of the relevant parts or products.*
 - (b) *Any warranty provided by the Contractor does not extend to any damage caused by any act or omission by the Principal, its agent, employees and subcontractors including but not limited to any modification of the Contractor’s workmanship by the Principal or any faulty installation by the Principal or any other party.*
- c. A new clause 2.7 shall be inserted as follows:

2.7 *Limitation of Liability*

To the extent permitted by law, the Contractor's total cumulative liability to the Principal for all loss, damages, costs or expenses (including legal costs) suffered or incurred by the Principal for all claims arising out of or in relation to the Contract is limited, in the aggregate total, to the contract sum. This limitation of liability applies whether the claim is based upon breach of contract, tort (including gross negligence), in equity, under a warranty, an indemnity, statute or otherwise.

The Contractor shall not be liable for any indirect, economic loss, consequential loss or special damages including any transportation, installation costs or adjustments or other expenses that are incurred as a result of the workmanship of the Contractor or during the repairs or recommissioning of any part of the WUC, any loss of profits, loss of revenue, loss of contract, loss of business opportunity, loss of production, production stoppage, facilities downtime, business interruption losses and loss of data.

- d. A new clause 2.8 shall be inserted as follows:

2.8 Principal's Warranties

The Principal acknowledges and warrants to the Contractor as follows:

- (a) the Principal acknowledges and accepts that the Contractor is not providing any preliminary design;*
- (b) that the Principal accepts the design and construction and risk in respect of all works which do not form part of the Works which includes, but is not limited to, the design and construction of any manufacturing process or plant and equipment which do not form part of the Works ("Other Works"); and*
- (c) design and construction of the Other Works will not affect the ability of the Contractor to carry out and complete the WUC.*

The Principal agrees to indemnify the Contractor from any cost, loss, expense, claim or damage arising from any Other Works.

3. Clause 20 shall be amended by adding the words "*and fairly*" after the words "*in good faith*" in the first sentence. The following sentence is added to the end of clause 20:

"In receiving payment claims, issuing payment schedules or receiving any other notice or communication pursuant to the SOP Act, the Superintendent acts as the agent of the Principal."

4. Clause 28 shall be amended by deleting the words commencing with "*The Superintendent may*" and ending with "*(which shall not be unreasonably withheld).*"

5. Clause 32 shall be amended by deleting the words "*It shall be deemed a Contract document*" in the fifth paragraph.

6. Clause 35 shall be amended by inserting the following sentence after the first sentence:

"The defects liability period in respect of electrical or mechanical plant and equipment shall not exceed the warranty period provided by the manufacturer or supplier of the plant and equipment".

7. Clause 36 shall be amended by renumbering clause 36.3 as 36.3A and inserting a new clause 36.3B as follows:

36.3B Notification of Variations

If the Contractor is of the opinion that a written or oral direction of the Superintendent is a variation to the WUC then the Contractor will within a reasonable period notify the Superintendent in writing of this opinion and will not be required to carry out the variation until a price in respect of the variation has been agreed.

8. Clause 37.2 is deleted and replaced with the following clause:

37.2 Payment

Within 30 days of receipt of a progress claim, the Principal will pay the Contractor the amount of the progress claim.

9. A new clause 37.7 shall be inserted as follows:

37.7 Costs of Debt Recovery

The Principal will pay the Contractor's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Principal, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Principal to the Contractor irrespective of whether pursuit of the recovery action, claim or remedy is successful.

10. Clause 39.9 shall be amended by deleting the reference to "28 days" and replacing it with "7 days".
11. Clause 39.10 shall be amended by deleting the words commencing with "If Alternative 2 of subclause 10.2 applies" and ending with "of the design documents".
12. A new clause 44 shall be inserted as follows

44 Repossession of materials and equipment forming part of the WUC

If any monies owing by the Principal to the Contractor are overdue or if this Contract is terminated for any reason whilst there are monies owing by the Principal to the Contractor, in addition to any rights that the Contractor may have under this Contract, the Principal acknowledges and agrees that:

- (a) upon demand by the Contractor, the Principal will deliver up possession of any materials and equipment forming part of the WUC to the Contractor;*
- (b) the Contractor, including its agents or employees, may without notice at any time enter any place where the Contractor believes the whole or part of the WUC is located to remove and repossess the any materials and equipment forming part of the WUC without committing a trespass;*
- (c) the Contractor will have no obligation to the Principal to make good any damage caused by such removal or repossession;*
- (d) the Principal agrees to indemnify and keep the Contractor indemnified against all liabilities, claims or costs suffered or incurred by the Contractor in exercising its rights under this clause 44;*
- (e) the Principal grants an irrevocable licence to the Contractor to enter any of the premises controlled by the Principal for the purposes of this clause 44;*

- (f) *Notwithstanding the provisions of this clause 44, the Contractor is entitled to maintain an action against the Principal for the full contract sum and any other loss suffered or incurred by the Contractor under this Contract; and*
- (g) *The Contractor is entitled to apply any payment received towards the payment for any part of the WUC supplied to the Principal.*

13. A new clause 45 shall be inserted as follows:

45. Personal Property Securities Act 2009 (PPSA):

The Principal grants the Contractor a security interest in all of the WUC supplied by the Contractor as security for all indebtedness owed whatsoever to the Contractor.

The Principal agrees, to the extent permitted by law:

- (a) *to promptly give the Contractor all assistance and information (including signing any documents) as the Contractor requests to ensure that the Contractor has a perfected first ranking security interest in all WUC (and the proceeds thereof) supplied by the Contractor;*
- (b) *that the Contractor may register a financing statement on the Personal Property Securities Register against the Principal;*
- (c) *that the cost of registering a finance statement (or a financing change statement) will be paid by the Principal;*
- (d) *that notices or documents required or permitted to be given to the Contractor under the PPSA may be given in accordance with the PPSA;*
- (e) *not to change its name without notifying the Contractor in writing of the Principal's intention to change its name at least 10 business days prior to doing so;*
- (f) *that it waives its rights to receive a copy of any financing statement, financing change statement or verification statement under the PPSA; and*
- (g) *that the parties contract out of the Principal's rights, and the Principal waives its rights, under sections 95 (Secured party must give notice of removal of accession), 118 (Enforcing Security in accordance with land law decisions), 121 (Enforcement of security interests in liquid assets), 125 (Obligation to dispose of or retain collateral), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account), 135(Notice of retention of collateral), 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement) of the PPSA.*

A word or expression used in this clause which is defined in the PPSA has the same meaning in this clause, unless the context otherwise requires.

5. ANNEXURE PART A

Unless specified otherwise in the *Contractor's Proposal*, the items in Part A of the Annexure are as follows:

- | | |
|---------------|---|
| Items 1 and 2 | the <i>Principal's</i> name and address is as specified in the <i>Contractor's Proposal</i> |
| Item 3 | SAGE Automation Pty Ltd |

Item 4	F22/ 6 MAB Eastern Promenade, 1284 South Road, Tonsley SA 5042.
Item 7.	The <i>date for practical completion</i> will be as nominated in the <i>Contractor's Proposal</i> or if no such period is nominated, then such period as the <i>Contractor</i> considers reasonable to complete the <i>WUC</i> .
Item 8.	The State of South Australia.
Item 10	<i>Principal's</i> project requirements are as identified in the <i>Contractor's Proposal</i>
Items 11 to 15 inclusive.	Not Applicable.
Item 16	as identified in the <i>Contractor's Proposal</i>
Item 19	as identified in the <i>Contractor's Proposal</i>
Item 21	Intellectual Property – Alternative 1
Item 23.	Alternative 2 will apply.
Item 24	Professional Indemnity Insurance: \$10 million
Item 25	Alternative 1 will apply. Public Liability Insurance: \$20 million
Items 29 and 30.	Not applicable
Item 32	Defect Liability Period: 12 months from the <i>date of practical completion</i>
Item 33	Invoicing: by the 30 th day of each month
Item 34.	All unfixed plant and materials
Item 35.	7%

6. APPENDIX 1

LICENCE AGREEMENT

To the extent there is a discrepancy between the terms of this Licence Agreement and clause 10.2 of the Contract, the terms of this Licence Agreement prevail.

Definitions

In this Licence Agreement:

“software” means the software developed by the *Contractor* pursuant to the *Contract* and includes all copyright or other intellectual property rights in the software.

“hardware” means any design of any physical part of the scope of the work the subject of the *Contract*.

“Design” means both “software” and “hardware”.

Design

The Design remains the property of and owned by the *Contractor*. The Design is licenced not sold or transferred to the *Principal*. The *Contractor* or its suppliers own all copyright and other *intellectual property rights* in the Design and all accompanying written materials.

Grant of Licence

This Licence Agreement grants the *Principal* the following rights:

- (a) Internal Use: the *Principal* is granted a non-exclusive licence to use the Design for internal use only within the *site* it was originally purchased for. The software may be copied or installed on any other personal computers within the *site*, subject to the licensing conditions of the Contractor’s suppliers’ software.
- (b) Modifications: the software may be changed by the *Principal* or another party only for the purpose of changes to the way the Design is required to operate or to fix any errors. If modifications are made to the Design, all *intellectual property rights* associated with the modifications will automatically be assigned to the *Contractor*. The *Contractor* has no liability to rectify any *defects* or problems as a result of the modifications and any warranties given by the *Contractor* in respect of the software shall be void.

Restrictions

The Design must not be provided, assigned, sold or distributed by the *Principal* to any other person or site without the prior written consent of the *Contractor*.

All title and intellectual property rights in and to the content that may be accessed through use of the software is the property of the respective content owner and may be protected by intellectual property laws. This Licence Agreement does not grant the *Principal* any right to use such content. The *Principal* must not remove or modify any copyright notice in any content or in the Design and its associated documentation.

This Licence Agreement does not grant the *Principal* any rights in connection with any trademarks or service marks of the *Contractor*.

Exclusion of Liability

Unless required by law, the *Contractor* shall not be liable for any loss, expense or damage, including any general, special or consequential damages arising out of the use or inability to use the Design (including but not limited to loss of profit, loss of revenue, loss of data or data being rendered inaccurate, losses sustained by third parties as a result of the failure of the software to operate with any other programs).

Termination of Licence

The *Contractor* may terminate this Licence Agreement immediately by notice to the *Principal* if:

- (a) the *Principal* fails to pay the *Contractor* any amount due to it after receiving a written demand requiring payment within 14 days;
- (b) the *Principal* is presumed insolvent within the meaning of any applicable Australian Law, it is placed into liquidation, administration or bankruptcy (as the case may be) or has a receiver, receiver and manager or mortgagee in possession appointed over its assets; or
- (c) the *Principal* breaches any clause of this Licence Agreement or the *Contract*.

Immediately upon termination of this Licence Agreement, the *Principal* must cease using the Design and return to the *Contractor* all documents, media, or items of any description containing, forming part of, associated with or utilising any of the Design.

The obligations created by this Licence Agreement survive the termination of this Licence Agreement.