

# GROUP STANDARD TERMS AND CONDITION OF PURCHASE – SHORT TERM

## 1. Definition

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In these Standard Terms and Conditions of Purchase:

**"Cyan"** means the Cyan entity ordering the Works as specified on the Order;

**"Cyan Group"** means Cyan and its parent, affiliated and subsidiary companies, and its and their respective officers, employees and agents;

**"Order"** means all purchase orders which CYAN may place with the Supplier;

**"Supplier"** means the party named on the Order who is bound to supply and deliver the Works;

**"Supplier Group"** means the Supplier and its parent, affiliated and subsidiary companies, and their contractors of any tier and its and their respective officers, employees and agents;

**"Terms and Conditions"** means the terms and conditions set out below; and

**"Work"** means the materials, products, equipment, goods, services, information and/or data to be provided as specified in the Order.

## 2. Terms

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Subject to any express variations (which must be signed by both CYAN and Supplier), these Terms and Conditions will apply to all Orders unless and to the extent otherwise stated explicitly in the Order. To the extent of any inconsistency between the terms of the Order and of these Terms and Conditions, the terms of the Order shall prevail.

## 3. Acknowledgement and Acceptance of order

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3.1 an Order will be deemed to have been accepted and these Terms and Conditions therefore binding by the Supplier upon the earlier of:

3.1.1 commencement of the performance of Work by the Supplier; and

3.1.2 Supplier's written or verbal acceptance of an Order.

3.2 The Order and these Terms and Conditions comprise the entire agreement between the parties in relation to the Order and supersede all prior negotiations, representations and/or agreements relating to the Order whether oral or in writing.

## 4. Revision

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4.1 Cyan reserves the right at any time prior to delivery or completion of the Works to direct a revision to the Order to correct any errors or omissions or to make any changes to the Works which may include additions or reductions to the Works ("Revision").

4.2 Upon receipt of a Revision from Cyan, the parties will in good faith negotiate any increase or reduction in the quoted price for the relevant Order and any changes to the delivery timeframes associated with the Revision. Where appropriate the basis of computation of any increase or

decrease in the quoted price will be by reference to the Supplier's rates under the existing Order.

- 4.3 Neither a waiver of any provision of the Order nor consent to any departure from the Order will be effective unless given in writing by Cyan and no provisions of the Order will be varied or amended without the prior written consent of the parties.

## 5. Completion and Delivery

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- 5.1 The Works will be completed by the delivery date specified in the Order or if not specified in accordance with Cyan's required delivery schedule. Partial delivery shall be subject to Cyan's approval. Time is of the essence in relation to the Supplier's obligation to deliver the Works by the date specified in the Order.
- 5.2 If the Supplier fails to commence performance of the Works such that it will be able to complete or deliver the Works on the delivery date or if it appears to Cyan that the Supplier may not be able to complete or deliver the Works on the delivery date specified in the Order, Cyan may in its absolute discretion elect to terminate the Order. In the event of late delivery, Cyan may (without prejudice to other rights available to it) terminate the Order or accept late delivery of the Works.
- 5.3 The Supplier will release, defend and indemnify the Cyan Group for all loss, expenses, damages, claims and liability incurred by the Cyan Group as a result of any delay or failure by the Supplier to complete or deliver the Works by the delivery date specified in the Order.
- 5.4 At completion and/or delivery of the Works, the Supplier will provide Cyan with all drawings, certificates and other documentation as may be specified in the Order or required by Cyan. The Supplier shall give sufficient notice to Cyan of its intention to cease supply of any component parts or replacements for goods, to enable Cyan to purchase such component parts or replacements goods from the Supplier, should Cyan so wish.
- 5.5 If Cyan agrees to accept late delivery of the Works, the Supplier shall pay Cyan liquidated damages:
- 5.5.1 commencing from the date on which the Works should have been delivered until the date until the Works are delivered; and
  - 5.5.2 payable at a rate of 0.5% of the purchase price for the Works, for each day of delay, to a maximum of 20% of the Order price.
- 5.6 Except where contrary to these Terms and Conditions (in which case these Terms and Conditions shall prevail), INCOTERMS 2022 (DDP) shall be applicable to delivery of Orders under these Terms and Conditions.

## 6. Title and Risk

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- 6.1 Title to and property in the Works will pass to Cyan upon the earlier of:
- 6.1.1 payment of any part of the Order price by Cyan; and
  - 6.1.2 delivery of the goods to Cyan's designated location (if applicable).
- 6.2 Risk in the Works will remain with the Supplier until the later of:
- 6.2.1 in respect of goods, delivery of the goods; and
  - 6.2.2 completion of the Works by the Supplier.
- 6.3 Risk in the Works and/or any part of them that do not comply with the requirements of the Order, and which are rejected by Cyan shall revert to or remain with the Supplier.

- 6.4 The Supplier will reimburse Cyan for any loss or damage to the Works while risk in the Works rests with the Supplier.

## 7. Inspection And Rejection of Works

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- 7.1 An authorised representative of Cyan will have the right but not the obligation to inspect and test all items of the Works prior to acceptance of the Works. The Supplier will allow Cyan access to Supplier's premises to inspect and test the Works, if so requested.
- 7.2 Cyan, in its absolute discretion, will have the right to reject and/or return any item of the Works at the Supplier's expense that Cyan considers defective or inferior in quality of material, workmanship or design or which fails to comply with the Order.
- 7.3 If the Works are rejected and/or returned by Cyan in accordance with clause 7.2 above, Cyan will have the right at its discretion to either have Supplier repair or replace the Works or purchase similar Works elsewhere and to claim any additional expense incurred by Cyan from the Supplier. The Supplier will refund any payments received from Cyan in relation to the rejected or returned Works.
- 7.4 The Supplier will not be relieved from any responsibility regarding defects or other failures to meet the Order requirements which may be subsequently discovered, including latent defects by virtue of Cyan's inspection, testing or acceptance of the Works.

## 8. Invoices/Payments

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- 8.1 Unless otherwise stated in the Order, the total Order price as indicated in the Order is the currency specified in the Order and is fixed and firm, not subject to escalation for the duration of the Order, and includes all taxes, duties and other charges, packing, testing, delivery and documentation costs.
- 8.2 The Supplier must issue a tax invoice satisfying all requirements of the laws of the relevant jurisdiction and reasonable requirements of Cyan together with requested supporting documentation ("**Invoice**").
- 8.3 Unless otherwise stated in the Order, payment of the Order price will be made in full within forty-five days from the end of the month in which Cyan receives a correct and proper Invoice.
- 8.4 If Cyan disputes any Invoice, then Cyan will promptly notify the Supplier of any such dispute. The Supplier will issue a credit note for the disputed value of the Invoice and upon receipt of this credit note Cyan will pay the undisputed portion of any such Invoice.
- 8.5 No claim for payment arising from the Order will be valid unless received by Cyan within three months of the date of completion of the Order.

## 9. Insurance

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- 9.1 The Supplier will, at its sole cost, effect and maintain adequate material loss or damage insurance for the full replacement value of the Works (including adequate transit insurance unless the Order specifically states that delivery is not a responsibility of the Supplier).
- 9.2 The Supplier will also carry the following insurances (to the extent that they are relevant to the provision of the Works):
- 9.2.1 workers compensation/employer's liability as required by law with (where legally permitted) an indemnity for Cyan Group and Cyan's client (as applicable). The Supplier will ensure that its sub-contractors have similarly insured its employees;
- 9.2.2 public & product liability insurance coverage for no less than AU\$10,000,000 or less if

- Cyan approves in writing;
- 9.2.3 Professional indemnity insurance for no less than AU\$5,000,000 or less if CYAN approves in writing; and
- 9.2.4 any other insurance required by law.
- 9.3 Upon request, the Supplier will provide Cyan with the certificates of insurance confirming coverage and copies of underlying policies.

## 10. Confidential Information and Intellectual Property

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- 10.1 Placement of an Order, designs, drawings, specifications and information including software ("Information") which may be provided by Cyan in connection with the Order are confidential and will only be used for the purpose of the Order. Such information will not be disclosed to any third party without the prior written consent of Cyan and will remain the property of Cyan. All Information belonging to Cyan will be returned to Cyan at the conclusion of the Order.
- 10.2 All intellectual property rights in the "Cyan" name and logo and in any drawings, designs, reprints, patterns, technical information, data, translations, samples, tools or equipment and in all specifications or data furnished to the Supplier or prepared or made by the Supplier, Supplier's employees, agents or sub-contractors for the purpose of fulfilling the Order will vest in and remain Cyan's property and any property which is the subject of such intellectual property rights will be returned to Cyan immediately on request.
- 10.3 All drawings, models, specifications, and other documents including software prepared by or acquired by the Supplier in connection with the Works required by an Order will become Cyan's property. The Supplier hereby assigns all rights in relation to such documentation and will deliver such documentation to Cyan upon completion or termination of the Order.
- 10.4 The Supplier warrants that the sale or use of the Works will not infringe or contribute to the infringement of any patents or any other intellectual property or proprietary rights owned by third parties.
- 10.5 The Supplier will release, defend and indemnify Cyan against all claims, losses, costs (including legal costs), expenses and damages of every kind and nature for, arising out of or in connection with any such alleged infringement of any patent or any other intellectual property or proprietary right arising out of or in connection with the order which may be brought against any member of Cyan Group. If any of the Works or part of the Works is held to constitute an infringement, the Supplier will at its expense, obtain for Cyan a royalty free license to use the item, or replace or modify the item in a manner satisfactory to Cyan so as to avoid the infringement without any degradation in performance.

## 11. Warranty

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- 11.1 The Supplier warrants that Works supplied are of satisfactory and merchantable quality, fit for the purpose intended, are of sound materials, workmanship, and design, free of defects in materials, workmanship and design, comply with all applicable laws and are capable of the standard of performance for which it is intended. The Supplier warrants that the Works are provided in strict accordance with the requirements specified in the Order and if Cyan supplied manufacturing drawings to the Supplier, the Supplier warrants that the Works are manufactured and supplied strictly in accordance with such drawings.
- 11.2 If the Works or any part of the Works are found to be contrary to the condition described in clause 11.1 or not in conformity of the requirements of the Order within 24 months from the date of delivery of the Works ("Warranty Period"), the Supplier will (at the option of CYAN) either

replace or repair and rectify any of those Works or parts of Works supplied by Supplier at the Supplier's expense. If the Supplier fails to comply with its obligations within a reasonable time period as determined by Cyan, Cyan may engage a third-party provider to replace or repair and rectify the defective, unsuitable or non-conforming Works and without prejudice to Cyan's other rights the Supplier must pay Cyan's costs in respect of the same. If the Supplier repairs or replaces or rectifies those Works during the Warranty Period then a new warranty will apply to those Works for a period of 12 months from the date that such repairs or replacements or rectification were completed to Cyan's satisfaction.

- 11.3 The Supplier will release, defend and indemnify the Cyan Group against all claims by any third party for loss or damage, directly or indirectly caused by Works supplied by the Supplier which are found to be defective in material or workmanship, unsuitable for the purpose intended, fail to comply with all applicable laws or incapable of the standard of performance intended or non-compliant with the Order.

## 12. Safety

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- 12.1 If the Works include a service or delivery which is being undertaken on property occupied by Cyan or its clients ("the Property") the Supplier will be responsible for the safety of all persons on the Property engaged in the work and will ensure that such persons will comply with all Cyan safety regulations and procedures, including Cyan's Contractor Safety Standards and General Requirements (which are available at Supplier's request) and with all applicable safety legislation.
- 12.2 The Supplier will provide full information on the use for which all Works supplied are designed and tested and of any conditions necessary to ensure such materials will be safe and without risk to health when handled, stored, transported and used. This information will be provided by the Supplier in writing, marked with the Order number and the relevant item number.
- 12.3 The Supplier will perform all activities under the Order compliance with all applicable laws, rules and regulations including those relating to the transport and use of hazardous materials.

## 13. Force Majeure

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- 13.1 Neither party will be liable to the other for any failure or delay in performing any obligation under an Order where such failure or delay is due to a force majeure occurrence. For the purposes of the Order only events beyond the control of the relevant party limited to the following occurrences shall constitute force majeure occurrences: riot, war, invasion, act of foreign enemies, hostilities (whether war has been declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, ionizing radiations or contamination by radio activity from any nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by devices travelling at sonic or supersonic speeds, earthquake, fire, flood, explosion or any other natural physical disaster, but excluding weather conditions regardless of severity, national or regional level strikes by labour not employed by the affected party, maritime or aviation disasters or any delays connected with existing and known circumstances (such as the COVID-19 pandemic).
- 13.2 If the Supplier fails to fulfill an Order due to a force majeure occurrence, Cyan may obtain substitute Works from elsewhere for this period, reducing the items ordered under such Order accordingly. If the Supplier is unable to continue fulfilling the Order within 15 days from specified delivery date, Cyan will have the right to terminate the Order without further obligation to the Supplier.

## 14. Suspension

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- 14.1 Cyan may suspend all or part of the supply of the Works at any time after acceptance of the Order by the Supplier for any period by notice in writing to the Supplier. The Supplier must comply with the notice and recommence supply when notified by Cyan.
- 14.2 The Supplier will not be entitled to any additional payment in respect of the suspension.
- 14.3 During any period of suspension, the Supplier must properly protect and secure Works and associated materials, equipment and other items used for the performance of the Order.

## 15. Cancellation

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- 15.1 Cyan, at its option, may cancel the Order or any part of the Order at any time.
- 15.2 If Cyan cancels an Order in accordance with clause 15.1 above, Cyan's sole liability will be to pay for materials manufactured and supplied in accordance with the Order as at the date of cancellation. Upon such payment, title to and property in all those materials and other items will pass to Cyan.

## 16. Termination

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- 16.1 Without prejudice to the terms of clause 15.1, in the event of any default of any of the conditions of the Order or these Terms and Conditions by the Supplier, Cyan may by written notice of default to the Supplier immediately terminate the Order or any part of the Order.
- 16.2 In the event Cyan terminates an Order in whole or in part because of any default by the Supplier, Cyan may procure, upon such terms and in such manner as Cyan may deem appropriate, Works similar to those terminated and the Supplier will be liable to Cyan for any excess costs of the same.

## 17. Indemnity

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- 17.1 In this clause, "Indemnified Person" means the Cyan Group and each of their clients, contractors and subcontractors.
- 17.2 Supplier shall supply the Works and enter onto Cyan's premises at Supplier's sole risk and Cyan shall not be liable to Supplier for any loss, damage, injury or death sustained by any person or to any property or for any pollution, howsoever caused arising out of or in connection with the Works.
- 17.3 Supplier must, irrespective of cause, indemnify, keep indemnified and hold harmless each Indemnified Person, against any liability, loss, damage, cost or expense, suffered or incurred by the Indemnified Person or any action, claim, liability, suit, proceeding, application or demand of any kind brought against the Indemnified Person by any person in respect of:
- 17.3.1 injury to or death of any person;
  - 17.3.2 loss or damage to any property and for losses resulting therefrom; and
  - 17.3.3 pollution and for losses and clean-up costs resulting therefrom.

## 18. Assignment and Sub-Contracting

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- 18.1 The Supplier will not assign the Order or any of its rights or obligations in these Terms and Conditions without the prior written consent of Cyan.
- 18.2 No part of the Order is to be sub-contracted without prior written agreement of Cyan. Sub-

contracting will not in any way relieve the Supplier from its obligations under the Order or these Terms and Conditions.

## **19. Applicable Law and Dispute Resolution**

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- 19.1 The Order and the rights and obligations of the parties will be construed in accordance with and be governed by the laws applicable in the jurisdiction in which the relevant Cyan entity named in the Order as listed in Annexure A.
- 19.2 Any dispute arising from the Order or these Terms and Conditions that cannot be resolved between the Parties may be referred to litigation in the jurisdiction and courts identified in clause 19.1 above.

## **20. Hazardous Materials**

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- 20.1 The Supplier will ensure that the Works will comply with the requirements of all applicable law and, to the extent that they contain toxic, corrosive or hazardous materials, the Supplier will ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions.
- 20.2 Works supplied under the Order, which are contaminated beyond use, at the time of delivery, shall be regenerated or disposed of by the Supplier. The title and risk of the contaminated Works will remain with the Supplier, who will bear all expenses for the said processes.

## **21. Service of Notice**

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- 21.1 Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under an Order will be delivered and addressed to the party at the address of the relevant party as set out in the Order. Notice will be deemed to have been received by any party, and will be effective:
- 21.1.1 on the day given (during normal business hours), if personally delivered or if sent by confirmed facsimile or electronic mail transmission (including any attached scanned documents), receipt verified, to a facsimile number or electronic mail address provided by the receiving party for the purpose of receiving such notices; or
  - 21.1.2 On the third day after which such notice is deposited, if mailed by certified or prepaid post.

## **22. Free Issue Materials**

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- 22.1 Where Cyan provides free issue materials for incorporation in the Order such materials shall remain the property of Cyan but shall become the risk and responsibility of the Supplier and shall so remain until the later of delivery to or acceptance of the Order by Cyan.
- 22.2 The Supplier shall use such materials economically and any surplus shall be accounted for to Cyan and disposed of in accordance with good industry practices and Cyan's instructions.
- 22.3 All free issue materials provided by Cyan shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier otherwise notifies Cyan within 48 hours.

## **23. Anti-Bribery and Corruption**

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- 23.1 The Supplier must not and must ensure that its subcontractors and personnel do not, either directly or indirectly offer or give to any person in the services of Cyan any gift or consideration



of any kind as an inducement or reward for any act or omission of that person or another in relation to the obtaining or execution of an Order or any other agreement with Cyan. The Supplier warrants that it and its subcontractors and personnel has not made and will not make, any payments, loans, gifts, or promises or offers of payments, loans or gifts, directly or indirectly to or for the use or benefit of any official or employee of any relevant government or to or for the use of any political party, official or candidate or to any other person.

23.2 The Supplier must immediately notify Cyan if it has breached or believes it may have breached clause 23.1.

## 24. Modern Slavery

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24.1 Cyan works to comply with the requirements of all applicable legislation concerning exploitative business practices including without limitation, slavery, servitude, forced labour, human trafficking, child labour and other slavery-like practices.

24.2 The Supplier warrants that it will:

24.2.1 comply with the legislation referred to in clause 24.1; and

24.2.2 conduct reasonable due diligence on its subcontractors, to investigate the risk of modern slavery within its operations and supply chain include requirements of this clause 24 are imposed on any party engaged by Supplier to provide goods and services.

## 25. Cyber Security

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25.1 In this Clause the following terms shall mean:

"Cyber Security Incident" is the loss or unauthorised destruction, alteration, disclosure of, access to, or control of a Digital Environment.

"Cyber Security" is technologies, processes, procedures and controls that are designed to protect Digital Environments from Cyber Security Incidents.

"Digital Environment" is information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems.

25.2 The Supplier shall implement (and regularly review) appropriate Cyber Security to protect its Digital Environment and respond effectively to a Cyber Security Incidents.

25.3 The Supplier shall use reasonable endeavours to ensure that any third-party providing services on its behalf in connection with these Terms and Conditions complies with the terms of subclause 25.2.

25.4 If the Supplier becomes aware of a Cyber Security Incident which affects or is likely to affect either Party it shall promptly notify Cyan.

25.5 If the Cyber Security Incident is within the Supplier's Digital Environment, the Supplier shall:

25.5.1 promptly take all steps necessary to mitigate and/or resolve the Cyber Security Incident; and

25.5.2 as soon as reasonably practicable, but no later than 12 hours after the original notification, provide Cyan with any information it may have which may assist Cyan in mitigating and/or preventing any effects of the Cyber Security Incident.

25.6 The Supplier shall share with Cyan any information that subsequently becomes available to it which may assist Cyan in mitigating and/or preventing any effects of the Cyber Security



Incident.

## **26. SEVERABILITY**

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Any provision of these Terms and Conditions which is found to be illegal, void or unenforceable is only ineffective to the extent of that illegality, invalidity or unenforceability, without invalidating the remaining provisions.

### Annexure A – Jurisdictional Matrix

Cyan Entity incorporated in	Laws and Courts applicable
Australia	Western Australian Laws & Western Australian Courts
England or Scotland	English Laws & English Courts
Singapore, Taiwan or other jurisdiction not listed above	Singaporean Laws & Singaporean Courts