

# TERMS OF PURCHASE OF GOODS AND SERVICES BY CANON INFORMATION SYSTEMS RESEARCH AUSTRALIA PTY LTD (CISRA)

(Version date: 4 November 2013)

## **1. Formation of Contract**

- 1.1 The Supplier agrees to provide Goods and Services to CISRA in accordance with the terms and conditions of this agreement ("Agreement").
- 1.2 No other terms (including without limitation any terms on any document issued by the Supplier) apply to the supply of the Goods and Services by the Supplier unless they are approved in writing by CISRA. If the Supplier is unable to, or does not wish to, comply with every aspect of CISRA's Purchase Order ("Order") (including the supply of the total order of the exact Goods and/or Services specified by the required delivery date/s), the Supplier should immediately reject the Order and notify CISRA's Purchasing Officer.
- 1.3 CISRA is not liable for any goods or services supplied by the Supplier unless they are the subject of an Order.
- 1.4 No variation of an Order or this Agreement is effective unless it is approved in writing by CISRA.
- 1.5 The Supplier must quote on all invoices, consignment notes and delivery dockets relating to the Goods and Services the number appearing on, or assigned by CISRA to, the relevant Order.

## **2. Goods and Services**

- 2.1 The Supplier warrants to CISRA that it has the right to sell the Goods and that the Goods will:
- (a) be of merchantable quality and fit for the purpose for which they are sold;
  - (b) conform to any description and any sample provided to CISRA by the Supplier;
  - (c) be new (unless specified otherwise);
  - (d) free from all charges, liens and encumbrances; and
  - (e) conform to the manufacturer's published specifications or requirements as well as any user guides and manuals supplied.
- 2.2 The Supplier warrants to CISRA that it has the right to provide the Services and that the Supplier will:
- (a) perform the Services in a proper and workmanlike manner with the degree of skill, care and due diligence expected of a skilled experienced provider of the same or similar service, including when the Supplier is on or about CISRA's premises;
  - (b) not perform any work on CISRA's premises, or use any equipment or any property belonging to CISRA, or any information acquired from CISRA, for the benefit of any person other than CISRA or otherwise than for the purpose of supplying the Services;
  - (c) comply with any legal obligations or professional standards which may apply to the performance of the Services; and

(d) perform the Services promptly and in a proper, diligent and professional manner.

2.3 In addition to clause 2.1 and/or 2.2, the Supplier warrants that the Goods and Services will:

- (a) not infringe the Intellectual Property Rights of any third party;
- (b) comply with any policies of CISRA notified to it and all reasonable directions provided by CISRA.

The warranties given in this Clause 2 are referred in this Agreement collectively as "the Requirements".

2.4 If any of the Goods delivered do not comply with the Requirements, or are not otherwise acceptable for any reason, CISRA may return the Goods to the Supplier and require their immediate repair, replacement or a refund of monies paid, at CISRA's sole discretion. If CISRA so chooses, it may cancel the entire Order and return all Goods to the Supplier and may cancel the balance of any other Orders not yet supplied. The Supplier will be responsible for any costs and losses associated with the return or cancellation of such Goods including freight and packaging.

2.5 If any of the Services performed by the Supplier do not comply with the Requirements or are otherwise unacceptable for any reason, CISRA may require their performance again or a refund of monies paid. CISRA will be entitled to suspend or terminate the provision of any Services to be performed at any time, without waiting for completion, if it forms the opinion, on reasonable grounds, that the Services are not being performed, in whole or in part, in compliance with the Requirements. In the event that the Supplier is unable to resupply the Services, CISRA may engage a third party to supply the Services at the Supplier's cost, at CISRA's sole discretion.

## **3. Price**

3.1 All Prices in the Order will be inclusive of GST unless otherwise expressly stated. The Supplier warrants that if required under Australian law, it is registered for GST purposes. In respect of any supply of Goods or Services under the Order in respect of which GST is payable (Affected Supplies):

- (a) the Supplier will, within the time required by law (and in any event with 28 days of request by CISRA) issue a tax invoice in respect of such GST which will enable CISRA, where entitled under the GST law, to claim an input tax credit in respect of such GST; and
- (b) CISRA will pay to the Supplier the amount shown on such tax invoice at the same time and in the same manner as the amounts otherwise payable under the Order for the Affected Supplies;

provided however that, if the Supplier fails to issue a tax invoice as required by law in respect of the Affected Supplies, the Supplier acknowledges that CISRA is entitled to deduct

from any payment an amount required to be deducted by law for remission to the Australian Taxation Office on the Supplier's account.

#### **4. Delivery**

- 4.1 The Goods must be delivered and the Services performed by the Delivery Date. The Supplier must deliver the Goods to the Delivery Location.
- 4.2 The Supplier acknowledges that CISRA may not have inspected the Goods at the time of delivery. Goods will only be deemed accepted after they have been actually unpacked and inspected by CISRA after the delivery date, regardless of when this may occur.
- 4.3 CISRA will confirm receipt of the Goods and the performance of the Services by signing the notice presented to it at the time of delivery of the Goods or completion of the Services. Goods are not taken to be delivered and the Services are not taken to have been performed unless and until that notice is signed by an authorised representative of CISRA.
- 4.4 CISRA may reject any Goods or Services not conforming to the relevant Order within a reasonable period after their delivery or performance. In such an event, the Supplier must reimburse CISRA the price paid for those Goods or Services, and any costs incurred by CISRA in connection with that rejection.
- 4.5 Time is of the essence in respect of the Supplier's obligations for delivery of the Goods and performance of the Services. In the event that the Goods are not delivered and/or the Services are not performed by the Delivery Date, CISRA may refuse delivery of the Goods and/or the performance of the Services and terminate all or any part of the relevant Order or cause the Supplier at its expense to deliver the Goods and/or perform the Services by the most expeditious means possible in accordance with CISRA's reasonable instructions.
- 4.6 If the Supplier delivers the Goods to the wrong location, then it must redeliver them to the Delivery Location at its expense.
- 4.7 Further to clause 4.2, CISRA may attend the Supplier's premises to inspect the Goods prior to the Delivery Date upon giving the Supplier reasonable notice.

#### **5. Title and Risk**

- 5.1 The title in the Goods will pass to CISRA upon payment but risk will pass upon acceptance by CISRA in accordance with clause 4.2.
- 5.2 CISRA's payment of any invoice does not constitute acceptance of the Goods and/or Services, and is made subject to the Supplier's obligation to immediately refund payment for any Goods and/or Services subsequently found to be unacceptable.

#### **6. Invoice & Payment**

- 6.1 Unless otherwise specified in the relevant Order, the Supplier's invoice must be a Tax Invoice and must set out itemised details and the Price of Goods and Services.
- 6.2 Subject to clauses 2.4 and 2.5, CISRA's payment terms are 30 days from receipt of a Tax Invoice issued by the Supplier in accordance with clause 3.

- 6.3 If any part of a Tax Invoice provided by the Supplier to CISRA is disputed, CISRA may withhold payment of the disputed amount until such time as the Supplier can justify to CISRA's reasonable satisfaction that it is entitled to payment.

#### **7. Packaging Requirements**

- 7.1 The Supplier must ensure that the Goods are suitably packed and prepared for shipment so as to secure the Goods against damage.
- 7.2 The Supplier will be solely responsible for any loss of, or damage to, the Goods in transit.

#### **8. Installation**

- 8.1 If the Supplier is to install any Goods then the Supplier will do all things reasonably necessary to ensure proper installation.

#### **9. Indemnity**

- 9.1 The Supplier indemnifies CISRA from and against any claim, demand, cause of action, damage, loss or expense (including reasonable legal expenses) made against or suffered by CISRA arising out of, or in connection with, or as a result of:

- (a) any Goods and/or Services supplied or to be supplied under the Order not complying with the Requirements; or
- (b) any actual or threatened infringement as a result of any negligent or unlawful act or omission in connection to a third party's intellectual property rights or any duty of confidentiality or other legal or equitable duty or obligation relating to the Goods and/or Services.

The Supplier must pay any costs reasonably incurred by CISRA in the event that the Supplier has to recall the Goods.

#### **10. Cancellation**

- 10.1 CISRA is entitled to cancel all or part of the Order, or terminate this Agreement, immediately if:
  - (a) The Supplier commits a material breach of the terms of this Agreement;
  - (b) For other breaches, the Supplier fails to rectify the breach within 14 days after CISRA provides the Supplier with written notice of the breach;
  - (c) The Supplier fails to meet any of the Requirements; or
  - (d) The Supplier becomes insolvent, has a receiver or liquidator appointed or an application is made to a court for the appointment of such a person, or the Supplier ceases to or threatens to cease carrying on business in the Goods or Services the subject of the Order, or such business is sold by the Supplier or otherwise comes under the control of any other person or legal entity.

#### **11. General**

- 11.1 **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of that State or courts competent to hear appeals from those courts.

- 11.2 **Insurance** – The Supplier shall effect (at its expense) and maintain all insurance which may be necessary or usual for the supply of the Goods and the performance of the Services including adequate insurance in respect of workers’ compensation, property damage, personal injury, professional liability/indemnity and public liability, and shall produce evidence of such insurance, on demand, to CISRA’s satisfaction.
- 11.3 **Confidentiality** – The Supplier acknowledges that CISRA may provide certain information that is confidential to CISRA. Such confidential information includes documentation, data, designs, drawings, processes, information relating to the general business operations within CISRA, this Agreement and all Orders. Such confidential information must only be used by the Supplier for the purpose of providing Goods and/or Services to CISRA, and must not be disclosed by the Supplier without CISRA’s prior written consent. If the parties enter into CISRA’s confidentiality agreement (“Confidentiality Agreement”), then the Confidentiality Agreement will prevail in relation to confidentiality.
- 11.4 **Intellectual Property** – If the Supplier has been commissioned to create tangible or intangible materials for CISRA, then the Supplier hereby assigns to CISRA all Intellectual Property Rights in such materials. CISRA may exercise its rights as the owner of the Intellectual Property Rights without acknowledging or attributing the Supplier or any third party engaged by the Supplier. For the avoidance of doubt, this clause may also apply to Goods provided by the Supplier.
- 11.5 **No waiver** – No right conferred on CISRA by this Agreement shall be deemed to be waived except by notice in writing signed by CISRA.
- 11.6 **Assignment and Sub-contracting** – Unless otherwise agreed in writing, the Supplier shall not assign the benefit or burden of this Agreement. The Supplier shall not sub-contract any of its obligations under this Agreement without CISRA’s prior written consent. If CISRA consents to the Supplier sub-contracting its obligations, the Supplier will be liable for all acts and omissions of that sub-contractor as if they were the acts and omissions of the Supplier.
- 11.7 **Further Assurances** – The Supplier will perform all acts and do all things necessary to give effect to this Agreement.
- 11.8 **Other Remedies** – The warranties and remedies contained in this Agreement are non-exclusive and are in addition to any other warranties and remedies contained in an Order, under law, or provided by the Supplier or a third party.
- 11.9 **Interpretation** – Unless the context otherwise requires: (a) headings, underlines and boldings are for convenience only and do not affect the interpretation of this Agreement; (b) singular words include the plural and vice versa; (c) where the day on which any thing is to be done is not a business day, that thing must be done on the next business day; (d) no rule of construction shall be applied to the disadvantage of a party who was responsible for the preparation of this Agreement; and (e) the word “includes”, “including”, “such as” and similar expressions are not words of limitation.
- 11.10 **Severability** – If one or more of the clauses in this Agreement is found to be void, unenforceable or invalid, the remaining provisions of this Agreement shall not thereby be affected and shall continue in full force and effect.
- 11.11 **Entire Agreement** – The Agreement, the Order, the Confidentiality Agreement (if applicable pursuant to clause 11.3) and any additional requirements or directions supplied in writing by CISRA constitute the entire agreement between the parties regarding the supply of the Goods or Services to which it relates. Such documents will prevail over all terms and conditions of any of the Supplier’s documentation, invoices or quotes supplied before or in acceptance of the Order, which shall be disregarded. If there are any inconsistencies between the Confidentiality Agreement (if applicable), the Agreement, the Order and any other requirements or directions supplied by CISRA in writing, then the documents will take precedence in that order to the extent of the inconsistencies.
- 11.12 **When this Agreement does not apply** – If there is a separate agreement for the supply of goods and service signed by the authorised signatories of the parties, then that agreement will prevail over this Agreement.

## **12. Definitions**

**“Affected Supplies”** means any supply of Goods and/or Services under the Order in respect of which GST is payable.

**“CISRA”** means Canon Information Systems Research Australia Pty Ltd ABN 29 003 943 780.

**“Delivery Date”, “Delivery Location” and “Price”** have the meanings set out in the relevant Order.

**“Goods”** means any goods (including software) specified in an Order, plus any other goods which may be created by the Supplier and/or otherwise provided in connection with the performance of the Services.

**“GST”** means goods and services tax imposed under GST Law.

**“GST Law”** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**“Intellectual Property Rights”** means all intellectual property rights, including, without limitation, patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information kept confidential.

**“Order”** means a valid purchase order issued by or in a form approved by CISRA.

**“Requirements”** means any warranties referred to in Clause 2.

**“Services”** means any services specified in an Order.

**“Supplier”** means the person, firm, partnership, company or any other legal entity indicated as the supplier in an Order and includes its employees, agents, officers and contractors.

**“Tax Invoice”** has the meaning given to that term in the GST Law.