

CONDITIONS OF PURCHASE OF ZENEXUS

APPLICATION OF THESE CONDITIONS

1. These Conditions apply to all purchases made by the Purchaser from the Supplier. Where the Supplier's acceptance of the Purchase Order from the Purchaser or delivery of the Goods to the Purchaser purports to be given on or subject to terms and conditions other than these Conditions, the Supplier agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Purchaser agrees otherwise in writing. The Supplier's supply of the Goods constitutes acknowledgment of and agreement to these Conditions.

SUPPLIER'S WARRANTIES

2. The Supplier expressly represents and warrants to the Purchaser that:
 - (a) upon delivery of the Goods the Supplier has good title to the Goods, which are free of all liens, encumbrances and other forms of security interests or other third party rights to the Goods;
 - (b) the Goods supplied are fit for the purpose for which they are bought by the Purchaser are of merchantable quality, are safe and free from defects in design, materials and workmanship;
 - (c) the Goods conform with the technical specifications and performance specifications specified by the Purchaser, and if the Purchaser has not specified any such specifications, then the Goods conform with technical specifications and performance specifications represented by the Supplier and also implied by the proposed use of the Goods;
 - (d) the Goods conform in all aspects with their description on the Purchase Order and all other requirements in the Contract;
 - (e) if a sample of the Goods has been made available to the Purchaser, then the Goods conform with that sample unless otherwise agreed in writing with the Purchaser;
 - (f) the Goods and anything supplied under the Contract (and the Purchaser's use of them) do not infringe any patent, trademark, registered design, tradename, copyright or other protected intellectual property right under PRC or any other applicable laws; and
 - (g) the Goods will be professionally packed for sea, road or rail transport, as appropriate, so that the Goods will not be damaged in transit.
3. The Supplier warrants that the Goods, their packaging, loading, transportation and importation (if relevant) shall comply with all local health and safety laws as well as applicable laws, regulations, standards and codes, including Chain of Responsibility Legislation and the ADGC (if applicable).
4. If the Goods include transport services, and the goods being transported by the Supplier are delivered late or are lost, stolen or damaged in any way, the Supplier indemnifies the Purchaser for all loss, costs, expenses and damage of any nature arising directly or indirectly as a result of such occurrence. This clause shall apply notwithstanding any clause in the Supplier's trading terms which might otherwise have the effect of excluding or limiting such liability.
5. The Supplier fully indemnifies the Purchaser (including its officers, employees, Related Bodies Corporate and agents) with respect to all loss, costs, expenses and damage of any nature (including those incurred by the Purchaser as a result of a product recall) arising directly or indirectly from:
 - (a) the Supplier's negligent act or omission;
 - (b) breach of the Contract by the Supplier, including the warranties contained in these Conditions, and;
 - (c) any claims by third parties for compensation for personal injury or loss or damage to third party property as a result of any act or omission of the Supplier. This clause shall apply notwithstanding any clause in the Supplier's trading terms which might otherwise have the effect of excluding or limiting such liability.

RIGHT OF REJECTION

6. The Purchaser has the right to reject the Goods or any part of them at any time for the Supplier's failure to comply with the Contract, including the failure of the Goods to meet the Purchaser's specifications. Upon any such rejection:
 - (a) risk of damage and loss of the Goods shall be borne by the Supplier. The Purchaser shall notify the Supplier of the rejection in writing and the Supplier shall (at the Supplier's expense) retake possession of the Goods rejected by the Purchaser;

- (b) the Purchaser is under no obligation to pay to the Supplier the price of the Goods rejected;
 - (c) if requested by the Purchaser, the Supplier shall immediately replace the rejected Goods with those that comply with the Contract; and
 - (d) the Supplier shall indemnify the Purchaser for any cost, loss, damage or liability (including without limitation loss of production or profit) suffered or incurred by the Purchaser and as a result of such rejection.
7. The making of payment for the Goods or the signing of a delivery docket or other acknowledgment of delivery does not prejudice the Purchaser's right of rejection, and upon a written notice to the Supplier, the Purchaser may deduct the amount of any payment made for rejected Goods from any present or future sums payable to the Supplier.

PRICE

8. All prices in the Purchase Order are fixed or, if a period is specified in the Purchase Order, fixed for that period and are inclusive of sales tax, duties and any other government imposts. No charges will be allowed for packing, crating, freight, cartage, duties, other taxes or imposts or any other costs incurred by the Supplier, unless expressly provided in the Purchase Order.
9. The Supplier agrees that all prices as stated in the Purchase Order are not subject to any adjustment, whether by reason of any of the following risks and contingencies or otherwise:
 - (a) rise and fall, due to changes in labour rates and conditions or cost of materials; or
 - (b) fluctuations, devaluations or any other adjustments to the value of any currency or raw materials or otherwise; or
 - (c) import and customs duty or sales tax or goods and services tax, whether in relation to imported goods or materials for the Goods or otherwise; or
 - (d) payments or relevant funds for superannuation, redundancy, severance, workers' compensation, long service leave or any other similar payments or contributions in respect of employees and workers.
10. Any reduction in price resulting from a reduction in any customs duty, sales tax, VAT or other tax or duty from those in force at the date of the Purchase Order and which are included in the agreed price is to be immediately allowed to the Purchaser in full as a reduction of the price of the Goods to be supplied.

PAYMENT

11. Terms of payment are by cheque, credit card, direct debit or other form agreed between the parties. Time for payment will be 62 days from the completion of the month of the invoice, unless otherwise agreed between the parties in writing.

DELIVERY

12. The Goods must be delivered in the manner and at the delivery point specified in the Purchase Order, or as otherwise specified by the Purchaser in writing to the Supplier. Where required by law or at the request of the Purchaser, the Supplier must provide all necessary certificates of conformance, certificates of analysis, test certificates (in English), labels, markings and Material Safety Data Sheets in relation to the Goods.
13. Time is of the essence in so far as it applies to the Supplier under the Contract. Without prejudice to any other rights which the Purchaser may have pursuant to the Contract, if any Goods are not, or are expected not to be delivered within the time specified in the Purchase Order (or as otherwise notified by the Purchaser), then the Supplier must immediately notify the Purchaser and the Purchaser may:
 - (a) refuse to accept such Goods and terminate the Purchase Order;
 - (b) require the Supplier to deliver the Goods by the fastest means, with any additional delivery charges being at the expense of the Supplier; or
 - (c) agree to extend the time for delivery of the Goods.

PASSING OF TITLE AND RISK

14. The title and risk in the Goods remains with the Supplier until the time of delivery in accordance with the Contract, at which time title in the Goods passes to the Purchaser.

ASSIGNMENT OF INTELLECTUAL PROPERTY

15. Unless the Purchaser expressly agrees otherwise in writing, the Supplier agrees that all intellectual and industrial property including, without limitation, any invention, discovery, patent,

trade mark, copyright, design, trade-secret or know-how, computer program or any other works produced or developed by the Supplier exclusively or predominantly for the Purchaser in relation to the Contract throughout the world ("Intellectual Property") is the absolute property of the Purchaser and without limitation the Purchaser has sole rights in and to it.

16. The Supplier shall assign to the Purchaser, and agrees to execute any document required to evidence such assignment and assist in any and all approval procedures for the assignment by relevant governmental authority as required under PRC or any other applicable laws, or to perfect the Purchaser's ownership of, all such Intellectual Property.

WARRANTY OBLIGATIONS

17. The Supplier shall provide the Purchaser with an eighteen month (or such other period as agreed in writing by the Purchaser) warranty covering design, workmanship, material and satisfactory mechanical and electrical functioning from the date of operational acceptance of the Goods.
18. For the duration of the warranty period, the Supplier warrants that the Goods will remain free from any defects, deficiencies or other faults. Any defects, deficiencies or other faults in the Goods which become apparent during the above period shall be repaired or otherwise remedied, by replacement if necessary, at no cost to the Purchaser.
19. If any part of the Goods fails during the warranty period, a fresh warranty for the same period commences in relation to the repaired or replaced item from the date when the Supplier receives the repaired or replaced item. The Supplier is liable to and indemnifies the Purchaser against any costs of removal, packing, transportation and reinstallation in relation to repaired or replaced Goods.
20. Without limiting any other right of the Purchaser under the Contract, the Purchaser shall have a right to maintain and/or repair the Goods itself, or using a third party. This shall not void or limit any warranty provided by the Supplier provided such maintenance or repair is performed by a suitably qualified person. The Supplier will provide reasonable assistance (including technical advice and software access) when requested by the Purchaser, free of further charge and for the life of the Goods, to enable the Purchaser to use, maintain, update and/or repair the Goods.

INSURANCE

20. The Supplier must arrange and maintain, for the duration of this Contract, at its own expense public and product liability insurance for an amount not less than AUD\$20 million per occurrence (unless otherwise agreed in writing by Purchaser) for the Supplier's own risk and that of its own employees, agents and subcontractors. Before commencing any work on any of the Purchaser's sites, the Supplier must produce certificates of currency evidencing acceptable levels of insurance for public liability and workers' compensation to the site contact as nominated on the Purchase Order.

OUTSOURCE

21. When the Supplier has engaged any other third party to produce any of the Goods, the Purchaser's prior written consent shall be obtained, and the Supplier shall remain liable for such third party's performance.

TOOLS

22. All tools, dies, patterns, jigs, equipment and drawings provided in connection with the Contract which are paid or to be paid for by the Purchaser whether outright or by instalments or by amortisation are the sole property of the Purchaser and must not be used without its authority and must be provided to the Purchaser immediately on request.

TERMINATION

23. If the Supplier fails or is unable to perform any of its material obligations under the Contract, or fails to perform any other obligations and does not rectify such failure within thirty (30) days after the Purchaser has given written notice thereof, the Purchaser may terminate the Contract by giving seven days prior notice in writing of its intention to do so, at the expiration of which period the Contract ceases immediately but without prejudice to any of the rights of the parties existing prior to the date on which the termination notice is served on the Supplier.

24. Upon or at any time after the Supplier:

- (a) assigns or subcontracts any part of its obligations under the Contract without the Purchaser's prior written consent; or
- (b) being an individual becomes insolvent or enters into any arrangements or compositions with his or her creditors concerning his/her material indebtedness, or being a Company, goes into liquidation, enters into any scheme or arrangement concerning its material indebtedness, is placed under official management, or has a receiver or manager or administrator appointed over the whole or any part of its undertaking or cause a meeting of its creditors or suspends or appears to have suspended payment of its debts; or
- (c) is otherwise prevented whether by reason of insolvency or otherwise from manufacturing and/or supplying the Goods the Purchaser may terminate the Contract by notice in writing to the Supplier without being or becoming liable to make any, or any further, payment to the Supplier until the Purchaser has been indemnified or otherwise compensated in full for all loss and damage it suffers or incurs by reason of such termination including any additional costs of re-supply of the Goods by others, and for any consequential losses.
25. Either party may terminate the Contract if any event of *force majeure* happens and extends over sixty (60) days, provided that:
- (a) the event must be the direct cause of the stoppage of, impediment to or delay in the performance of the terms of the Contract;
- (b) the party directly affected by the event shall have, in such circumstances, adopted all reasonable measures to continue performing the terms of the Contract and to reduce the losses caused to the other party arising from the event;
- (c) the party directly affected by the event shall have, upon encountering such event, immediately informed the other party, and shall, within fifteen (15) days, have furnished written information on the event and the manner in which it is being handled, and the reasons for the delay in performing or the inability to perform all or a portion of the terms of the Contract. Furthermore, a lawful office of public notaries of the place where the event occurred shall have provided relevant certification. The party affected by the event shall be excused from responsibility for the performance of the affected portions of the Contract. A *force majeure* event means any event unforeseeable, unavoidable and uncontrollable, for example, fire, flood, seismic sea wave, earthquake, lightning, storm and hostile military action.
- #### **MISCELLANEOUS**
26. The Supplier must, in supplying the Goods to the Purchaser, comply with the Purchaser's "Supplier Code of Conduct" as updated from time to time and available on the Zenexus website.
27. No clause in the Contract is to be construed as requiring a person to act in a manner, or to direct another person to act in a manner that is contrary to the Chain of Responsibility Legislation.
28. Nothing in the Contract is intended to exclude, restrict or modify rights which the Purchaser may have under common law, legislation (including the Australian Consumer Law) or otherwise which may not be excluded, restricted or modified by agreement.
29. If a clause of the Contract is deemed illegal or unenforceable in the circumstances, then that clause is to be interpreted in such a manner that allows it to be read as enforceable. Where such interpretation is not available, the parts of the clause(s) that are deemed illegal or unenforceable are severed from the Contract and all other clauses remain unchanged.
30. The Purchaser may set-off any amounts owed by it to the Supplier under the Contract against amounts owed by the Supplier to the Purchaser on any account whatsoever, upon a notice from the Purchaser to the Supplier in relation thereof and the set-off shall become effective when the notice reaches the Supplier.
31. The waiver by the Purchaser of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or breach of any other provision, or further breach of the same or any other provision of the Contract.
32. The Contract (including the details appearing on the Purchase Order) constitutes the entire agreement between the Purchaser and the Supplier. No modification is binding in relation to the Contract unless agreed to in writing by both parties.
33. Both the Purchaser and the Supplier may only use confidential information of the other (including but not limited to, details of

- the Purchaser's volumes, prices and specifications) for the purposes of the Contract and both parties agree to keep confidential any confidential information of the other except to the extent the information is public knowledge or disclosure is required by law.
34. Any dispute arising out of the Contract is governed by the laws of the People's Republic of China. In case of any dispute regarding the Contract, which cannot be settled by amicable negotiations between the parties within sixty (60) days since the occurrence date of the dispute, the dispute shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration. The location for the arbitration shall be Shanghai and the then effective CIETAC rules shall apply. The award of the arbitration shall be final and binding on both parties.
35. This document may be provided to the Supplier in English and Chinese language forms. In the event of any inconsistency, the English version will prevail.
36. The Supplier acknowledges that the Goods may be resupplied by the Purchaser to a Related Body Corporate of Purchaser and that the covenants, representations, warranties and indemnities given by the Supplier in any Contract continue to apply notwithstanding such resupply. If as a result of Supplier's breach of a Contract or negligence, any Related Body Corporate of Purchaser suffers loss or damage ("Purchaser Group Loss") the Purchaser Group Loss will be deemed to be loss or damage of Purchaser; and Supplier will be liable to Purchaser in respect of the Purchaser Group Loss as if loss or damage of exactly the same character as the Purchaser Group Loss had been suffered by Purchaser.
37. The following words have the following meanings in these Conditions, unless the context requires otherwise:
- (a) **"ADGC"** means the Australian Dangerous Goods Code (if applicable);
 - (b) **"Contract"** means the agreement between the Purchaser and the Supplier for the purchase of the Goods on these Conditions and includes the details appearing on the Purchase Order;
 - (c) **"Chain of Responsibility Legislation"** means any Commonwealth, State or Territory law based on or adapted from the model Road Transport Reform (*Compliance and Enforcement Bill*) 2003 (*Cth*) as in force in the Commonwealth of Australia or in any Australian State or Territory (if applicable);
 - (d) **"Goods"** means all goods, software and/or services ordered in the Purchase Order;
 - (e) **"Purchase Order"** means a purchase order issued by Sales Force National Pty Ltd (t/a Zenexus) or any of their Related Bodies Corporate, whether by way of email, mail, hand delivery, facsimile, or in any other written form;
 - (f) **"Purchaser"** means the company identified in the Purchase Order;
 - (g) **"Related Bodies Corporate"** means in respect to any legal entity, a company which directly or, indirectly through one or more intermediate legal entities, controls, or is controlled by, or is under common control with that legal entity. For this purpose, "control" means the direct or indirect ownership of in aggregate fifty percent (50 %) or more voting capital.
 - (h) **"Supplier"** means the person (including its successors and permitted assigns) named in the Purchase Order, and where this consists of more than one person the obligations in the Contract are deemed to be joint and several.