

GENERAL TERMS AND CONDITIONS OF PURCHASE

THESE TERMS AND CONDITIONS OF PURCHASE COVER CALLIDUS PROCESS SOLUTIONS, CALLIDUS WELDING SOLUTIONS, CALLIDUS PROCESS SOLUTIONS PHILIPPINES, CALLIDUS NOUVELLE CALÉDONIE, CALLIDUS PROCESS SOLUTIONS MADAGASCAR, CALLIDUS MADAGASCAR OIL & GAS, CALLIDUS PROCESS SOLUTIONS PAPUA NEW GUINEA

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:-

“**Buyer**” means Callidus Process Solutions Pty Ltd registered in Australia under number 077149529; or any subsidiary company within the Callidus group, as specified in the Purchase Order.

“**Conditions**” means the General Terms and Conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Supplier.

“**Consequential Loss**” means any loss or anticipated loss of profit, loss or anticipated loss of revenue, business interruption, loss of use of any equipment, loss of any contract or other business opportunity, loss of production and any other loss of a similar nature.

“**Date for Delivery**” means the date by which the Goods and Services must be delivered, whether specified in the Purchase Order or agreed by the parties in accordance with clause 5.4.

“**Goods**” means the items to be provided (including any instalment of the items or any part of them and including documentation as detailed in the Supplier Data Requirements List) in accordance with the Purchase Order.

“**Purchase Order**” means the contract formed by the acceptance of the Purchase Order document and shall incorporate these conditions of purchase as may be amended by special conditions referred to in the Purchase Order document.

“**Supplier**” means the person(s), firm or company named in the Purchase Order and engaged by Callidus for the supply of Goods and/or execution of Services defined in the Purchase Order and includes the Supplier's legal personal representatives, successors and assignees.

“**Services**” means the services, if any, to be supplied by the Supplier in accordance with the Purchase Order.

“**Specification**” includes any plans, drawings, standards, data or other information relating to the Goods or Services.

1.2 The Supplier shall be deemed to have accepted the Purchase Order and its Conditions as soon as it commences to perform any of its obligations hereunder.

1.3 These Conditions shall have precedence over any other conditions appearing on any form or document emanating from the Supplier, either pre or post acceptance under Point 1.2 above, which shall have no effect except to the extent that they confirm the Purchase Order or are expressly agreed in writing by the Buyer.

2. SPECIFICATIONS

2.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Supplier or agreed in writing by the Buyer.

2.2 Any Specification supplied by the Buyer to the Supplier, or specifically produced by the Supplier for the Buyer, in connection with the Order, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Supplier shall not disclose to any third party or use any such Specification except to the extent it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Purchase Order.

3. PRICE OF THE GOODS AND SERVICES

3.1 The price of the Goods and the Services shall be stated in the Purchase Order and be based on the quotation supplied by the Supplier as a result of the enquiry from the Buyer and, unless otherwise stated, shall be:-

- (a) exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a value added tax invoice); and
- (b) inclusive of all charges for packaging, packing, shipping, carriage, insurance, exchange rate variations and delivery of the Goods to the delivery address and any duties, imposts or levies other than value added tax.

3.2 All prices specified in the Purchase Order shall be fixed and firm and not subject to escalation for the duration of the Purchase Order.

4. TERMS OF PAYMENT

4.1 Unless otherwise stated in the Purchase Order, payment shall be made within 45 days after receipt by the Buyer of a proper invoice.

4.2 The Buyer shall be entitled to set off against the invoice any sums owed to the Buyer by the Supplier.

5. DELIVERY

5.1 The Goods shall be delivered to and the Services shall be performed at the delivery address during the Buyer's usual business hours. The Supplier shall provide reasonable notice to the Buyer before delivering any Goods or Services.

5.2 Delivery of the Goods and Services shall be to the named destination on the Purchase Order as per Incoterms 2010.

5.3 The Goods and Services shall be delivered by the Buyer no later than the Date for Delivery specified in the Purchase Order.

5.4 Where no Date for Delivery is specified in the Purchase Order, the Date for Delivery shall be the date agreed in writing by the parties and the Supplier must deliver the Goods and Services by no later than that date.

5.5 A packing note quoting the Purchase Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.

5.6 If the Goods are to be delivered or the Services are to be performed by instalments, the Purchase Order will be treated as a single contract and not several.

5.7 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Purchase Order. If it is necessary to return the Goods to the Supplier, then the cost of returning the Goods will be a debt due and payable by the Supplier to the Buyer.

5.8 The Supplier shall supply the Buyer in good time with any instructions, letters of conformity, material certificates or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.

5.9 Goods are to be suitably packed and protected to ensure safe consignment to the delivery address. The Purchase Order number is to be quoted on all packages/documents. If packaging/protection is of a specialised nature, whereby removal would render Goods unsuitable for service, then this should be stipulated by the Supplier.

All supplies (with the exception of electronic media) must fall into one of the following categories:-

(a) Items less than 15kg:

Items may be packed in a cardboard box, with bubble wrap only used for packing. Do not exceed 15kg per box (total weight of contents)

(b) Items exceeding 15kg but less than 1000kg:

(i) Wedges or blocks must be affixed to the pallet where movement of the load within banding may occur.

(ii) Where the load has a narrow base or feet which may damage the pallet or slip between pallet top decks during transit a wooden board must be affixed to the pallet to provide a solid base.

(iii) Where shrink wrap is used then a minimum amount only must be used and its use must not impede forklift access.

(iv) Plastic, polystyrene or any kind of chips will not be accepted under any circumstances.

(c) Items exceeding 1000kg:

Goods over 1000kg shall be suitably packaged to support the Goods for floor standing.

5.10 The Buyer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

5.11 If the Goods are not delivered or the Services are not performed on the Date for Delivery, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the price or (if the Buyer has paid the price) to claim from the Supplier by way of liquidated damage for delay, 1% of the contract value for every week's delay, up to a maximum of 10%.

5.12 Goods with limited shelf life shall have a minimum of 95% of shelf life remaining on the date of delivery to the Buyer.

6. RISK AND TITLE

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Purchase Order, except in the case of Supplier consigned stock held at the Buyer's premises where risk remains with the Supplier until the Purchase Order is raised by the Buyer.

6.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Purchase Order.

7. WARRANTIES AND LIABILITY

7.1 The Supplier warrants to the Buyer that the Goods will comply with all statutory requirements and regulations relating to the sale of the Goods.

7.2 During a period of 24 months after the time of dispatch or 18 months after installation (whichever period expires first), the Supplier shall upon request by the Buyer, at his own expense, repair or replace the Goods or Services or any part thereof found to be defective due to faulty design, material, equipment or workmanship (other than design specified in detail by the Buyer) or to any act or omission of the Supplier.

7.3 If the Supplier is unable or refuses to undertake any re-performance which has been requested by the Buyer, the Buyer shall be entitled (without prejudice to any other rights and remedies it may have under the Purchase Order) to undertake any re-performance itself or to procure a third party to undertake such re-performance and, in either instance, recover all costs (including incidental costs) of such re-performance as a debt due and payable from the Supplier.

7.4 Substituted or repaired items will be subject to an additional warranty on the same terms as this clause 7.2 commencing on the date of replacement.

7.5 The Supplier shall indemnify the Buyer against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:-

- (a) breach of any warranty given by the Supplier in relation to the Goods or the Services;
- (b) any claim that the Goods infringe, or their importation, use or resale infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- (c) any liability under the Australian Consumer Law in respect of the Goods;
- (d) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering or installing the Goods or performing the Services;
- (e) any defect in the Goods or Services provided; or
- (f) any costs incurred, or paid by the buyer, in relation to improper delivery, including but not limited to customs holding charges, redirection of goods and multiple deliveries.

7.6 The Supplier shall indemnify the Buyer against all loss or damage to property or liability for injuries (including death) sustained by anyone, including Supplier's and Buyer's employees and third parties, arising out of or in connection with the Goods and/or Services covered by the Purchase Order.

7.7 The Supplier shall take out and maintain, with a first class insurance company, insurance adequate to cover its liabilities hereunder and to fulfil any legislative requirements.

7.8 Notwithstanding any other provision of these Conditions, the Buyer shall not be liable to the Supplier for Consequential Loss. The Supplier shall not be liable to the Buyer for Consequential Loss, except to the extent that the Buyer recovers any amount under an insurance policy carried by the Supplier.

8. FORCE MAJEURE

8.1 Neither the Supplier nor the Buyer shall be liable to the other or be deemed to be in breach of the Purchase Order by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or Services, if the cause of the delay or failure was beyond that party's reasonable control.

9. TERMINATION

9.1 The Buyer shall be entitled to cancel the Purchase Order in respect of all or part only of the Goods and/or the Services by giving notice

to the Supplier at any time and for any reason, in which event the Buyer's sole liability shall be to pay to the Supplier the price for the Goods or Services already delivered before the cancellation takes effect.

9.2 The Buyer shall be entitled to terminate the Purchase Order without liability to the Supplier by giving notice to the Supplier at any time if the Supplier fails to comply with any of the terms of the Purchase Order.

9.3 To the extent permitted by law, the Buyer shall be entitled to terminate the Purchase Order without liability to the Supplier by giving notice to the Supplier at any time if:

- (a) the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Bankruptcy Act 1966) or, being a company, has an administrator appointed or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
- (b) a creditor takes possession of, or a receiver is appointed to, any of the property or assets of the Supplier;
- (c) the Supplier ceases, or threatens to cease, to carry on business; or
- (d) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

10. CONFIDENTIALITY

10.1 The Supplier acknowledges and accepts that the information contained in the documents provided by the Buyer in connection with the Purchase Order is confidential and shall not be divulged to any third party or to be used for any other purpose than the performance of the Purchase Order, without the prior written consent of the Buyer.

11. GENERAL

11.1 Assignment

The Purchase Order is personal to the Supplier and the Supplier shall not assign, subcontract or transfer or purport to assign, subcontract or transfer to any other person any of its rights or subcontract any of its obligations under the Purchase Order without the prior written consent of the Buyer.

11.2 Notices

Any notice required or permitted to be given by either party to the other in connection with the Purchase Order shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Such notices shall be deemed effective within 48 hours of dispatch.

11.3 Waiver

(a) None of the provisions of the Purchase Order will be considered waived by the Buyer unless such waiver is given in writing by the Buyer. No such waiver shall be a waiver of past or future defaults, breach or modifications of any of the terms, provisions, conditions or covenants of the Purchase Order unless expressly set forth in such waiver.

(b) If any provision of the Conditions of the Purchase Order are held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Purchase Order and the remainder of the provision in question shall not be affected hereby.

11.4 Resolution of Disputes/Applicable Law

(a) In the event of any dispute arising under or in connection with the Purchase Order or the supply of the Goods or Services then either party may issue a dispute notice. Every effort shall be made to resolve and agree such a dispute by discussion between the parties. If, after a maximum period of 2 months from the date of issue of the dispute notice (or such other period as may be agreed by the parties), there is a failure to reach agreement, the dispute shall be referred to arbitration.

(b) The arbitration shall be:

(i) conducted by a single arbitrator appointed by agreement between the parties or (in default of agreement) nominated on the application of either party by the President for the time being of the Law Society of Western Australia;

(ii) held in Perth, Western Australia;

- (iii) conducted according to the Resolution Institute Arbitration Rules in force at the time of referral to arbitration (except as modified by these Conditions); and
 - (iv) final, binding, not subject to appeal and enforceable in any court of competent jurisdiction.
- (c) Neither party may commence legal proceedings (except for urgent interlocutory relief) in relation to any dispute unless the procedure referred to in this clause has been strictly complied with.
 - (d) Notwithstanding the existence of a dispute, the Supplier shall continue to carry out its obligations under the Purchase Order.
 - (e) The Purchase Order shall be governed by and interpreted and construed in accordance with the laws of Western Australia and the parties submit to the jurisdiction of courts in that state.
 - (f) Unless otherwise specified, all quotations, contract documents, data and drawings shall be supplied in the English Language.

12. TECHNICAL SUPPORT

- 12.1 The Supplier agrees to fully support the Buyer with any and all technical information required to support the Supplier's products. This support should cover the complete range of installed equipment and will cover repairs, spares and technical information whether the Goods were purchased as part of the Purchase Order or otherwise.

13. QUALITY

- 13.1 The Buyer operates established quality management systems which comply to BS EN ISO 9001. All Goods supplied against the Purchase Order shall be as to allow the Buyer to meet the requirements for product identification and traceability to the source of supply.
- 13.2 The Supplier shall therefore ensure that its products are correctly identified and that the supporting documentation is provided in accordance with the requirements of the Purchase Order. All documentation affecting the specification of equipment/material on the Purchase Order including British, European and other international standards shall be to the latest issue unless otherwise stated.
- 13.3 Identification

All Goods supplied against the Purchase Order shall be marked in such a manner as to provide adequate identification to the document number and any manufacturer's identities, part numbers, cast codes or serial numbers as applicable.
- 13.4 Certification
 - (a) Each consignment of Goods supplied against the Purchase Order shall be accompanied by the relevant certification/documentation stipulated by the Purchase Order.
 - (b) Pressure test certification must be dated within six months of anticipated delivery to the Buyer.
- 13.5 Inspection
 - (a) Inspection shall be carried out on receipt by the Buyer.
 - (b) Inspection may consist of, but not be limited to:-
 - (i) Visual Inspection;
 - (ii) Marking/Tagging;
 - (iii) Dimensional Inspection; or
 - (iv) Pressure/Function Tests
 - (c) The Supplier shall not refuse any reasonable request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to dispatch, and the Supplier shall provide the Buyer with all facilities reasonably required for inspection and testing at no cost to the Buyer.

- (d) If inspection of the Goods is to be carried out at the Supplier's premises, the Buyer is to be given a minimum of 48 hours notice of impending inspection points. All technical queries and documentation which require approval are to be provided to the Buyer with sufficient time to allow the Buyer to address those queries and provide necessary documentation without delaying the date for delivery.
- (e) Any request from the Buyer to dispatch Goods on an urgent basis does not supersede the Supplier's responsibility for ensuring that inspection requirements are met, unless formal notification that inspection is to be waived is provided in writing by the Buyer.
- (f) If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Purchase Order, and the Buyer informs the Supplier within 14 days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance. Any such inspection or tests shall not in any way relieve the Supplier from any of its obligations under the Purchase Order from those existing either at common law or by statute.

14. ENGINEERING SPECIFICATION

- 14.1 Goods are to comply with the requirements stated on the Purchase Order or referenced data sheets. Callidus Engineering Specification, issued with the RFQ and/or Purchase Order will apply in the absence of such detail.

15. CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH (COSHH)

- 15.1 Where applicable, any hazardous materials/chemicals requested on the Purchase Order shall be
 - (a) clearly marked in accordance with the national regulation of the country of destination but as a minimum supplied with hazard symbols and classification clearly identified on containers;
 - (b) packaged separately;
- 15.2 A copy of the Health & Safety Hazard datasheet shall be supplied.

16. VARIATION

- 16.1 All amendments to Purchase Orders must be agreed in writing by both the Supplier and the Buyer.

THIS DOCUMENT IS SUBJECT TO CHANGE WITHOUT FORMAL NOTICE. EACH CONTRACT WILL BE GOVERNED BY THE TERMS AND CONDITIONS IN FORCE AT THE TIME THAT THE PURCHASE ORDER IS ISSUED.