

Standard Terms and Conditions

Note: Additional terms may apply to the supply of specific types of Goods and Services and the parties may also supplement or modify these terms by agreeing to special conditions.

1 Definitions

In these terms and conditions:

Contract or **Document** means the contract formed between Sundale Ltd and the Supplier including the Details Schedule, these terms and conditions and any Special Conditions.

Contractors Handbook means the handbook containing obligations of the Supplier, maintained by SUNDALE (as amended from time to time) for the benefit of Suppliers to assist in the provision of Goods or Services to SUNDALE, a copy of which has been provided to the Supplier prior to or with a copy of this Agreement with the current version to remain available on SUNDALE's website.

Customer means the organisation requesting a supply under an Order or individual to whom Deliverables are to be provided, namely SUNDALE and its affiliates (if any) or any end user.

Deliverables means:

- (a) the Goods and/or Services to be provided by the Supplier to SUNDALE as specified in the Details; and
- (b) any documentation to be provided to SUNDALE including to enable SUNDALE to use the Deliverables; and
- (c) all incidental and ancillary goods, services and documentation.

Goods means the products, goods, consumables and/or materials to be supplied.

Intellectual Property Rights means all intellectual property rights, including copyright, patents, trademarks, designs, trade secrets, inventions, know-how, copyright, rights in circuit layouts and confidential information, any application for any of the foregoing rights and any rights of a similar nature.

Licence means a licence, qualification, permit or registration issued or granted by a government agency or professional body, or any statutory requirement necessary for the supply of the Goods or Services and includes NDIS clearance, a current National Criminal History Record Check or a Positive Notice (or Police Check), Yellow Card or Blue Card under any applicable legislation,

Loss means all loss, liability, damage, claims, injury (including disease or illness), death, expense (including legal expenses or costs).

Modern Slavery has the meaning given in section 4 of the Modern Slavery Act 2018 (Cth).

Order means an order or purchase order for the supply of Goods or Services, provided to SUNDALE by a Supplier for one or more supplies. Each order will amount to a separate agreement between the parties.

Party means the Supplier and SUNDALE and, where the contract requires, shall include their personnel.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel means:

- (a) officers, directors, employees, agents, temporary contractors, and

(b) in the case of the Supplier includes:

- (i) any subcontractor and the subcontractor's officers, directors, employees, agents and temporary contractors; and
- (ii) any other person employed or engaged by the Supplier in the performance of the Deliverables.

Police Check means a formal inquiry made to the relevant police authority in each Australian State or Territory (or any place outside of Australia where the Supplier knows the relevant Personnel may have resided) to obtain details of the relevant Personnel's criminal conviction or finding of guilt in all places (within and outside Australia).

Policies and Procedures means SUNDALE's policies and procedures specified in the Schedule and Contractors Handbook and as notified to the Supplier by SUNDALE from time to time.

Price means the sum identified in the Schedule which SUNDALE agrees to pay the supplier for the Goods and Services, which will be inclusive of all charges, costs and expenses and GST unless otherwise specified and agreed by SUNDALE.

Required Checks means the checks which the Supplier must provide to Sundale prior to entering onto Sundale's premises to undertake the Services including Police Checks, NDIS Worker Screening, Drivers Licence or Working With Children checks as set out in the Schedule.

Site means the location or premises where the Deliverables are to be provided.

Services means any services or works to be supplied under an Order.

Supplier means the party engaged to supply Goods and/or Services under an Order.

Supplier Code of Conduct means the SUNDALE Supplier Code of Conduct, which is available on the SUNDALE website at which may be updated, with changes notified to the Supplier, from time-to-time.

Vulnerable Persons includes children, the elderly and infirm.

2 General

- 2.1 These terms and conditions (also T&C's) are binding on SUNDALE and the Supplier, and apply to each supply of Goods and Services to SUNDALE. These T&C's shall be the only terms and conditions relating to the supply, unless the Parties agree to sign a variation.
- 2.2 Any Order is not binding until accepted and an agreement is formed and shall not be regarded as giving rise to an exclusive arrangement. SUNDALE may engage other Suppliers, including to provide the same or similar Deliverables.

3 Prices

An Order cannot be varied except in writing and signed by the Parties. The Price will include all of the Supplier's costs and expenses including travel and delivery charges and consumables, unless otherwise agreed, and the Supplier is not entitled to claim those items in addition to the Price.

4 Licences

- 4.1 Prior to supplying the Goods or Services, the Supplier must obtain, at its own expense, any Licence required by law or requested by SUNDALE.
- 4.2 All Licences must remain valid and current for the duration of provision of the Goods and Services.

5 Performance

The Supplier must perform the Services in a professional manner, to at least the standard expected in the industry and in a way that minimises interference with any of SUNDALE's activities.

6 Invoices and payments

- 6.1 The Supplier must comply with SUNDALE's ordering process, including for the fulfilment of any online/electronic orders. The Order number and sufficient details of the Goods or Services supplied must be provided when seeking payment.
- 6.2 Price: In consideration for the provision of the Deliverables, SUNDALE agrees to pay the Price to the Supplier.
- 6.3 Invoices will be paid 30 days from invoice date month end, unless a dispute is raised by SUNDALE, to the account nominated by the Supplier in the Schedule.
- 6.4 Approved Expenses: SUNDALE will not reimburse the Supplier for any expense which is not an approved expense.
- 6.5 Set Off: SUNDALE may set off any amounts payable by the Supplier to SUNDALE against amounts payable to the Supplier by SUNDALE.
- 6.6 Disputed amounts: SUNDALE is not required to pay any amounts which it disputes until the dispute has been resolved in accordance with clause 20.2 but will pay all amounts not subject to a dispute.
- 6.7 Interest: Interest will not be payable on any late payments.

7 Delivery, Acceptance and Defects

- 7.1 The Supplier must provide all Deliverables by the Specified Date set out in Item 5 of the Details Schedule and within a reasonable time of any Order.
- 7.2 If the Deliverable are not supplied by the Specified Date or within a reasonable time if none is specified, SUNDALE may cancel the Order for all or part of the incomplete supply. The Supplier may request an extension of time which will be at SUNDALE's discretion.
- 7.3 Goods delivered or Services provided in error, which are to be repaired or replaced or fail to comply with the terms of the Order, may be returned to the Supplier at the Supplier's expense.
- 7.4 SUNDALE will notify the Supplier promptly on becoming aware of any defect in Goods or Services supplied. SUNDALE will specify the defect and the action which it considers the Supplier must take to remedy it.
- 7.5 The Supplier must repair, replace or re-supply any defective Goods and Services within a reasonable time, being 14 days, unless otherwise agreed by the parties.

8 Warranties

- 8.1 The Supplier warrants that it will:
 - (a) perform its obligations in a competent and professional manner
 - (b) ensure its Personnel are appropriately qualified, skilled and supervised;
 - (c) comply with all laws and regulations and any reasonable requests by SUNDALE;
 - (d) ensure the Goods and Services and any Deliverables:
 - (i) comply with the description in an Order;
 - (ii) conform to any relevant specifications and Australian standards;

- (iii) are fit for their intended purpose and any other purpose made known by Sundale;
- (iv) are new and original (unless otherwise agreed);
- (v) are of merchantable quality and free from any defect in design, materials and workmanship for a minimum of twelve months or for the period of warranty specified in a manufacturer warranty or guarantee.

8.2 The Supplier further warrants that:

- (a) it has sufficiently experienced and appropriately qualified and trained Personnel or staff to provide the Deliverables;
- (b) all Required Checks (including Criminal History Check, known as National Police Certificate or NPC which is not more than 3 years old; NDIS Worker Screening clearance which is not more than 5 years old Licences, permits, authorisations or permissions that the Supplier is required to have in order to provide the Deliverables are:
 - (i) valid and current;
 - (ii) not subject to any conditions or restrictions that may interfere with the Supplier's ability to provide the Deliverables; and
 - (iii) have been obtained to enable the Supplier to provide the Deliverables in accordance with all laws;
 - (iv) to be made available to SUNDALE on request for copying/inspection and that the Supplier has obtained all necessary consents from its Personnel to disclose and/or provide copies of those records to SUNDALE for the purposes of this document and to entitle SUNDALE to retain those records in relation to the provision of the Deliverables.
- (c) it has assessed the risks involved in provision of the Deliverables;
- (d) it does not have any conflict of interest which may affect its performance;
- (e) it has reviewed this document, and had the opportunity to take independent legal and financial advice;

8.3 Acknowledgment

The Supplier acknowledges that SUNDALE, in placing any Order or entering into any Contract, is relying on the above warranties and representations and may reject and/or require repair or re-supply of any Goods or Services which do not comply.

9 Supplier's Obligations - General

9.1 In providing the Deliverables to SUNDALE, the Supplier:

- (a) must keep time of the essence for all supplies and obligations due by a specified date;
- (b) must promptly notify SUNDALE if it believes it will not be able to meet any due date;
- (c) must comply with all reasonable directions of SUNDALE;
- (d) must act reasonably in exercising all of its rights;
- (e) must cooperate with SUNDALE's Personnel and other suppliers, as directed;
- (f) must:
 - (i) create and maintain records of its performance;

- (ii) give SUNDALE reasonable access to records on reasonable request;
- (iii) maintain those records in accordance with SUNDALE's Privacy Policy and clause 16.
- (g) must immediately notify SUNDALE if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chain;
- (h) must at all times, comply and ensure that the Supplier's Personnel comply with, all applicable work health and safety Laws and, if requested by SUNDALE, provide copies of documents recording its compliance; and
- (i) for all relevant tasks (such as hot works, cutting and excavation) must complete a Job Safety Analysis and Safe Work Method Statement before commencing any works.

10 Site

10.1 Access

SUNDALE will give the Supplier sufficient access to the Site to enable the Supplier to perform its obligations. The Supplier may only access and use the Site for that purpose.

10.2 Workplace health and safety

- (a) The Supplier and its Personnel must:
 - (i) confirm that they are familiar with all legal requirements relating to the provision of goods and services to Aged Care, including all Government regulations and NDIS requirements;
 - (ii) ensure that they comply with these regulations and requirements at all times;
 - (iii) comply with SUNDALE's workplace health and safety requirements (as notified by SUNDALE from time to time);
 - (iv) keep the Site clean and tidy and remove all rubbish and surplus material created by it;
 - (v) comply with all SUNDALE Policies and Procedures as well as any requirements including in relation to NDIS and child safety;
 - (vi) provide evidence of compliance with any legislation, mandated health requirements or advice and vaccination status; and
 - (vii) take all reasonable steps to avoid workplace incidents, accidents or injuries.
- (b) The Supplier will indemnify SUNDALE against any claim, resulting from its failure to comply with this clause.
- (c) The Supplier must as soon as reasonably practicable notify SUNDALE of any incident, accident or injury that occurs on a Site.

10.3 Obligation to prevent damage

- (a) The Supplier must take all necessary steps to avoid causing damage to any property, and to prevent harm or nuisance to any persons, on or near the Site.
- (b) The Supplier must remedy any damage to the satisfaction of SUNDALE.
- (c) If the Supplier fails to comply SUNDALE may perform those obligations and all costs incurred will become a debt due and payable to SUNDALE by the Supplier.

10.4 Site Conduct and Identification

- (a) The Supplier acknowledges that Vulnerable Persons may be present on Site.
- (b) The Supplier's Personnel must engage appropriately with Vulnerable Persons and all other users of the Site.
- (c) All of the Supplier's Personnel must wear or carry a valid identity card at all times when on the Site.
- (d) All of the Supplier's Personnel must sign in at the Site and follow the process advised by SUNDALE from time to time.
- (e) The daily sign in process required on entering and exiting Site by all the Supplier's Personnel/s identified in SUNDALE's Supplier Handbook (or policy) which can be accessed via the following link www.sundale.org.au/
 - (i) all the Supplier's Personnel must familiarise themselves with the Supplier Handbook (or policy) before entering the Site;
 - (ii) the Supplier must provide SUNDALE with written confirmation that all of the Supplier's Personnel have reviewed and are familiar with the Supplier Handbook (or policy) before entering a Site;
 - (iii) SUNDALE may refuse access to Site for any Supplier's Personnel who have not complied with this clause 10.4(e);
 - (iv) Nothing in this clause shall shift the onus from the Supplier to ensure that its Personnel comply with the provisions of this clause and the Supplier shall indemnify SUNDALE in relation to any claims which may arise as a result of its breach.

10.5 Safety and hazardous material

The Supplier must observe at all times safe work practices, ensure that it is Personnel undertake hazard awareness training and supply appropriate safety clothing and equipment.

11 Indemnity

11.1 The Supplier must indemnify SUNDALE from claims:

- (a) of infringement of any Intellectual Property Rights;
- (b) for breach of obligations under these terms; or
- (c) for damages arising out of the Supplier's negligence.

11.2 The Supplier's liability is reduced proportionately to the extent that any Loss is caused by the negligence of SUNDALE.

12 Title and risk in goods

12.1 Risk in Goods remains with the Supplier until the Goods have been delivered or (where appropriate) installed.

12.2 Title to Goods, shall pass to SUNDALE upon delivery /instalment or payment, whichever is the earlier.

12.3 All Goods must be delivered free of encumbrances and other adverse interests.

13 Ownership of intellectual property

- 13.1 SUNDALE shall own all Intellectual Property Rights, including any copyright subsisting in the Goods and Services which are created in relation to the supply, including all plans, designs, computer programs, software and source code and other works.
- 13.2 The Supplier shall take any steps which SUNDALE requires in order to record or perfect SUNDALE's ownership of such intellectual property rights.
- 13.3 The Supplier acknowledges that SUNDALE is entitled to alter or change the Deliverables or works provided in any way and that the Supplier and its Personnel consent to such changes and waive any moral rights.
- 13.4 The Supplier must not use any of SUNDALE's name or marks, including in a promotional sense, without SUNDALE's written consent.

14 Governing law

These terms and conditions shall be construed in accordance with the laws of the State of Queensland and the parties submit to the courts of that jurisdiction.

15 Confidentiality

The Supplier agrees to keep SUNDALE's Confidential Information confidential and not to use the information for any other purpose. "Confidential Information" includes any information designated by the Customer as confidential, or which is, by its nature, is confidential.

16 Privacy

- 16.1 In addition to complying with SUNDALE's Privacy Policy, the Supplier must comply with the *Privacy Act 1988* (Cth) and any laws governing privacy or personal or sensitive information and must not cause SUNDALE to be in breach of any privacy legislation. The Supplier must establish effective measures to safeguard personal and sensitive information to a standard equivalent to that set out in SUNDALE's Privacy Policy.
- 16.2 The Supplier must immediately notify SUNDALE of any privacy breach and must take such steps as SUNDALE may require to mitigate the effect and/or notify of such breach.
- 16.3 The Supplier must collect and provide all consents required by SUNDALE in relation to the collection, handling and use of personal information (including sensitive information) recorded in provision of the Deliverables or incidentals thereto.

17 Modern Slavery

- 17.1 The Supplier will ensure that it and all of its Personnel, agents, contractors and sub-contractors comply with all applicable laws, statutes and regulations relating to the *Modern Slavery Act 2018* (Cth) and will take reasonable steps to ensure that there is no Modern Slavery in the Supplier's agents, contractors and/or sub-contractors supply chains or in any part of their business.
- 17.2 The Supplier represents and warrants that it conducts its business in a manner that is consistent with the principles of the *Modern Slavery Act 2018* (Cth) and that the Supplier, its officers, employees or others persons associated with the Supplier have not been convicted of (or is the subject of any investigation, inquiry or enforcement proceedings in relation to) any offence involving Modern Slavery.
- 17.3 The Supplier may at times be requested to complete surveys, questionnaires or training in relation to Modern Slavery and in line with SUNDALE's reporting obligations.

- 17.4 The Supplier will notify the Customer as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain related to an Order.

18 Supplier Code of Conduct

- 18.1 The Supplier will, ensure its Personnel comply with SUNDALE's Policies and Procedures as well as the Contractors Handbook and Supplier Code of Conduct. The Supplier will promptly notify SUNDALE of any non-compliance.
- 18.2 SUNDALE may request the Supplier to provide information and/or complete surveys relating to the conduct of its business generally, during or after the completion of any contract.

19 Insurances

- 19.1 The Supplier shall maintain appropriate insurances, (including without limitation, public liability, workers' compensation, vehicle, professional indemnity and general commercial insurance) in an amount sufficient to cover the Supplier's liabilities under any Order and, as a minimum, to the limits set out in Item 16 of the Details Schedule.
- 19.2 A copy of the Supplier's insurance policies must be provided to SUNDALE on request.

20 Disputes and Conflicts of interest

- 20.1 The Supplier must avoid any actual or apparent conflicts between its obligations to SUNDALE and other parties.
- 20.2 Any dispute arising in relation to an Order must be referred to mediation within 14 days in the event that the Parties have been unable to resolve the matter between themselves within 7 days of the notification of the dispute.

21 Termination

- 21.1 SUNDALE may terminate any Order or Contract by immediate notice in writing to the Supplier if the Supplier is in breach of these terms. Such termination will be without prejudice to any other right SUNDALE may have at law, including under clause 11 of this Contract.
- 21.2 SUNDALE may terminate any Order or Contract for convenience on the provision of 30 days' notice to the Supplier, in which case:
- (a) SUNDALE shall only be liable for any work performed and expenses incurred by the Supplier prior to the provision of notice or agreed to be undertaken during the 30 day notice period.
 - (b) The Supplier shall have no further claim including in relation to loss of profits or compensation.

22 Relationship

- 22.1 The Supplier is an independent contractor. Nothing in this contract constitutes a relationship of partnership, trust or employer and employee between the parties.
- 22.2 The Supplier must not incur any cost on behalf of or purport to act for or bind SUNDALE in any way.

23 Miscellaneous

- 23.1 Assignment

- (a) The Supplier may not assign any of its rights under this document without the prior written consent of SUNDALE, acting reasonably.
- (b) SUNDALE may assign, dispose of, deal with, declare a trust over or otherwise create an interest in, its rights or obligations under this document by written notice to the Supplier.

23.2 Amendment

This document can only be amended, supplemented, novated or replaced by another document signed by the Parties.

23.3 Waiver

A right under this document can only be waived by notice signed by the Party or Parties waiving the right. A party does not waive its rights under this document because it grants an extension or forbearance to any other party. A waiver of a right on one or more occasions does not operate as a waiver of that right if that right arises again. The exercise of a right does not prevent any further exercise of that right or of any other right. If a Party does not exercise a right or remedy fully or at a given time, the Party may still exercise it later.

23.4 No Merger

- (a) None of the rights and obligations of a Party under this document merge:
 - (b) on completion of any transaction contemplated by this document; or
 - (c) as a consequence of anything done under this document,
- and those rights and obligations at all times remain in full force and effect.

23.5 Survival of Rights and Obligations

- (a) The following survive termination or expiration of this document:
 - (i) Rights accrued to a Party up to the date of termination or expiration of this document.
 - (ii) Indemnities and obligations of confidence given by a Party under this document.

24 No Payment Required to Claim Indemnity

It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under this document.

25 Giving Effect to this Document

Each Party agrees, at its own expense, to do anything (including ensuring that its employees and agents do anything) that any other Party reasonably requires (such as obtaining consents, signing and producing documents) as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

26 Entire Agreement

- 26.1 This document embodies the entire agreement between the Parties and supersedes all previous agreements, understandings, negotiations, warranties and representations;
- 26.2 The Supplier must not seek to incorporate any additional terms by way of quotation, invoice or in any other manner and SUNDALE shall not be bound by such additional terms unless specifically acknowledged and agreed in writing.

27 Inconsistencies

If this document is inconsistent with any other agreement between the Parties, this document prevails to the extent of the inconsistency.

27.1 Construction

No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this document.

27.2 Severability

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

27.3 Costs and Expenses

Each Party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of an Order and this document.