

GENERAL TERMS AND CONDITIONS OF SALE

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

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions: -

"Business Day" means any day from Monday to Friday on which the Company is open for business.

"Buyer" means the company, partnership, business or individual who/which purchases the Goods from the Company.

"Company" means Callidus Process Solutions Pty Ltd registered in Australia under number 077149529; or any subsidiary company within the group.

"Conditions" means the General Terms and Conditions of Sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Buyer.

"Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions.

"Delivery Point" means the place where delivery of the Goods is to take place under condition 4

"Goods" means the goods or services or any part thereof to be sold or provided to the Buyer by the Company as described in the Contract.

"Price" means the price for the Goods as stated in the Company's quotation as accepted by the Buyer's purchase order.

1.2 Clause heading are for ease of reference only and shall not affect the construction or interpretation of any clause.

1.3 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

2. APPLICATION OF TERMS

2.1 Unless otherwise agreed in writing by the Company, these conditions are the only conditions upon which the Company is prepared to supply the Goods to the Buyer. These Conditions shall constitute the whole agreement between the Company and the Buyer and shall govern the Contract to the entire exclusion of all other terms or conditions, regardless of whether received per or post agreement (including the Buyer's terms and conditions or those implied by trade, custom or practice).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer. Any quotation is given on the basis that no contract shall come into existence until the Company dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of Thirty (30) days only from its date, provided the Company has not previously withdrawn it.

2.5 These Conditions apply to all the Company's sales and any variation to these Conditions and any representation about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

2.6 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation as agreed by the Buyer's purchase order.

3.2 All drawings, particulars of weights and dimensions, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract and this is not a sale by sample.

4. DELIVERY

4.1 Delivery is in accordance with the Contract terms by any method convenient to the Company and the Buyer will be charged accordingly.

4.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Delivery times specified by the Company in its quotation are intended to be business estimates only and the Company is not liable to the Buyer for any failure to comply with such delivery times.

4.4 Subject to the other provisions of these Conditions the Company will not be held liable for any direct, indirect or consequential loss, or any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

4.5 If Company is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer (including but not limited to failure to provide specifications or such other information as Company reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery period and the Contract Price shall both be adjusted accordingly.

4.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations: -

(a) risk in the Goods shall pass to the Buyer;

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods for the Buyer and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.7 The Buyer shall provide at the Delivery Point, at the Buyer's expense, adequate and appropriate equipment and manual labour for unloading the Goods.

4.8 The Company is not bound to deliver the Goods in one lot, shipment or consignment and the Buyer shall accept split deliveries or delivery by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 days of the date when the Goods would, in the ordinary course of events, have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. INSPECTION, TESTING AND CALIBRATION

6.1 Goods will be inspected by Company and, where practicable, submitted to Company's standard tests before dispatch. Any additional tests or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative and/or calibration) or the supply of test certificates and/or detailed test results shall be subject to Company's prior written agreement and the Company reserves the right to charge, therefore.

6.2 If the Buyer or its representative fails to attend such inspection, tests or calibration after 7 days' notice that the Goods are ready therefore, the inspection, tests and/or calibration will proceed and will be deemed to have been made in the presence of Buyer or its representative and the Company's statement that the Goods have passed such inspection, testing and/or calibration shall be conclusive.

7. RISK / TITLE

7.1 The Goods are at the risk of the Buyer from the time of delivery or within 7 days of receiving notice that the Goods are ready for delivery, whichever is the earlier.

- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of: -
- (a) the Goods; and
 - (b) all other sums which are, or which become due to the Company from the Buyer on any account.
- 7.3 Until ownership of the Goods passes to the Buyer, the Buyer shall: -
- (a) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (c) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Buyer shall produce the policy of insurance to the Company.
- 7.4 The Buyer can only resell the Goods before ownership has passed to it solely on the following conditions: -
- (a) any sale shall be affected in the ordinary course of the Buyer's business at full market value; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal in making such a sale.
- 7.5 The Buyer's right of possession of the Goods shall terminate immediately if: -
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or as a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed, or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
 - (b) the Buyer suffers any diligence or execution to be levied, on his/its property or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts under the Bankruptcy Act 1966 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods.
- 7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are being stored in order to inspect them, or, where the Buyer's rights to possession has terminated, to recover them.
- 8. RISK AND TITLE**
- 8.1 Unless otherwise agreed in the Contract, the Price shall be payable in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded) within 30 days of the Company's invoice date, without further notice from the Company. All sums are to be paid in the currency as specified on the invoice.
- 8.2 The Price for the Goods shall be exclusive of any value added tax, export, import, excise duties and any other taxes or duties. All such taxes or duties shall be payable by the Buyer.
- 8.3 The Company may invoice on or any time after delivery, or if the Buyer wrongfully fails to take delivery or otherwise suspends or delays delivery, the Company is entitled to invoice from the date the Goods were tendered for delivery.
- 8.4 If the Buyer fails to make timely payment of any sum due, the Company may suspend the delivery of Goods until full payment is made. If such failure to make payment continues for more than one month, the Company may without prejudice to any other contractual rights, terminate this Contract and dispose of the any Goods appropriate to the Contract.
- 8.5 No payment will be deemed to have been received until the Company has received cleared funds.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the matter will be passed to the Company's lawyers to commence legal proceedings to recoup any amounts owed under the Contract.
- 8.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provisions.
- 8.8 Time of payment is of the essence. If any payment is overdue, interest will be charged from the date of invoice both before and after any court judgement on a daily basis at an annual rate of 5% above the rate of interest levied by the National Australia Bank from time to time on business overdrafts in excess of \$100,000 compounded daily until the sum due is paid.
- 9. WARRANTY**
- 9.1 The Company warrants that: -
- (a) Goods supplied by the Company will be free from defects in materials or workmanship under normal use and care and services will be performed by trained personnel using proper equipment and instrumentation for the particular service provided. The foregoing warranties will apply until the expiration of the warranty period which is 12 months from the date of initial installation or 18 months from the date of notification of delivery by the Company whichever occurs earliest;
 - (b) if any of the Goods do not conform to this warranty the Company will at its option either repair or replace non-conforming Goods or take back the non-conforming Goods and refund the appropriate part of the purchase Price.
 - (c) Should the warranty period given by the original manufacturer be less than that stated in (a) then company reserves the right to reduce the warranty period to that given by the manufacturer unless otherwise agreed.
- 9.2 The warranty contained in clause 9.1 is conditional upon: -
- (a) the Buyer giving written notice to the Company within 14 days of the time when the Buyer discovers or ought to have discovered the alleged non-conformity in the Goods;
 - (b) the Buyer giving the Company reasonable access to inspect the Goods and, if requested by the Company, returning the alleged non-conforming Goods to the Company's premises, carriage paid, for inspection;
 - (c) the Goods having been properly stored, maintained, handled and installed in accordance with good industrial practises and the Company's recommended procedures; and
 - (d) the Buyer having paid for the Goods in full.
- 9.3 The Company accepts no liability in respect of: -
- (a) any modification or alteration required to the Goods made necessary by any legislation, regulation or requirements of any authority after the purchase order has been placed;
 - (b) any repair or replacement required to any Goods where any identification, serial or batch number has been altered, defaced or removed, or if any unauthorised work has been carried out by others; and
 - (c) faults caused by accident, neglect, misuse or normal wear and tear.
- 9.4 This warranty is given in lieu of all warranties and conditions whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) which are hereby excluded to the fullest extent permitted by law.
- 10. LIMITATION OF LIABILITY**
- 10.1 Neither party excludes or limits its liability to the other party for death or personal injury caused by any negligent act or omission, or wilful misconduct or breach of duty of such party.
- 10.2 The Company shall, in no circumstances, be liable to the Buyer in respect of any of the following losses or damage (whether such losses or damages were foreseen, foreseeable, known or otherwise):

- (a) indirect or consequential loss or damage;
- (b) loss of business profits, salary, business revenue, goodwill, or anticipated savings;

10.3 Notwithstanding any other provision of this Agreement, the parties agree that to the maximum extent permitted by law the Company's maximum liability to the Buyer arising out of or in connection with this Agreement or under any written or unwritten law, including without limitation in tort, in quasi contract or misrepresentation, (and including but not limited to any consequential loss or damage including loss of profit, loss of revenue, loss of opportunity or any indirect loss or damage) is limited to the greater of: -

- (a) The amount paid to the Company for the performance of the particular Goods and/or Services in respect of which the liability is claimed to have arisen; or
- (b) Where the event or events giving rise to the liability claimed to have arisen occur in circumstances in which a policy of insurance required by this Agreement will respond (or, but for any act or omission of the Company, would have responded) to a claim for indemnification, the amount recoverable by the Company under that policy, or which would have been recoverable under that policy but for the act or omission of the Company.

11. INTELLECTUAL PROPERTY

- 11.1 The Buyer warrant to the Company that all documents provided by the Buyer are accurate and that the Company is entitled to use all such documents for the purpose of the Contract and that such use does not infringe any third party's intellectual property rights.
- 11.2 The Buyer indemnifies the company against all claims and all losses and damages incurred by the Company as a result of documents provided by the Buyer resulting in a breach of a third party's intellectual property rights.
- 11.3 If the Buyer received any confidential information from the Company, the Buyer may not use or disclose such information unless it received the prior written consent with the Company.

12. GENERAL

- 12.1 The Company may terminate the Contract with immediate written notice if the Buyer fails to pay the Price in accordance with condition 8.4.
- 12.2 The Buyer may terminate or suspend its order for all, or part of the Goods covered by the Contract only upon the Company's written consent.
- 12.3 In the event of cancellation of the Contract by the Buyer, the Buyer will be liable for all costs incurred by the seller up to the time of cancellation or a variable charge based on the full value of the Contract dependent upon the time elapsed after placement of the Order whichever be the greater. The variable charges are defined as follows: -

(a)	2 weeks	25%
(b)	3-4 weeks	30%
(c)	5-6 weeks	50%
(d)	7-8 weeks	75%
(e)	9 weeks or more	100%

13. ASSIGNATION

- 13.1 The Company may at any time assign the Contract or any of its rights or obligations under it.
- 13.2 The Buyer shall not and shall not purport to assign or otherwise transfer the Contract or any rights or obligations under it without the Company's prior written consent. Any such consent shall not excuse the Buyer from performance of any obligations on its part to be performed.

14. SEVERABILITY

- 14.1 If and in so far as any part or provision of these Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

15. FORCE MAJEURE

- 15.1 The Contract shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage, governmental decisions or actions including but not limited to prohibition of exports

or the failure to grant or revocation of applicable export licenses, or labour trouble, strike, lockout or injunction.

- 15.2 If either party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar days, either party may terminate the then unperformed element of the Contract by notice in writing given to the other party, without liability provided that the Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered as at the date of termination. Company may deliver by instalments and if so, each delivery shall constitute a separate Contract and failure by the Company to delivery any one or more of the instalments in accordance with their terms shall not entitle the Buyer to terminate the whole of the Contract or treat it as repudiated.

16. VARIATION

- 16.1 Any variation to the Contract shall only be effective if in writing and signed by authorised representatives of both parties.

17. WAIVER

- 17.1 No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

18. THIRD PARTY RIGHTS

- 18.1 Save to the extent expressly set out in the Contract, the Contract is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it and the rights set out in the Contracts (Rights of Third Party Parties) Act shall not apply.

19. NOTICES

- 19.1 Notices may be served by telex or fax and are deemed served the next working day after despatch.

20. GOVERNING LAW

- 20.1 The construction, validity and performance of this Contract shall be governed by and construed in accordance with Western Australia law and the parties hereby submit to the exclusive jurisdiction of the Western Australian courts.

21. PROTECTION OF PERSONAL DATA

- 21.1 In accordance with the General Data Protection Regulation (GDPR), we will ask for your agreement to collect these personal data. You enjoy the right of access and rectification to your personal data.
- 21.2 The purpose of personal data processing is:
 - (a) The legitimate interest pursued by our Company for marketing and customer relations management purposes, the organisation of our services, the registration and the invitation to the events of the Company;
 - (b) The execution of the pre-contractual measures or of the Contract when it implements a processing which purpose is the production, the management, the follow-up of the orders of our customers, the recovery;
 - (c) The compliance with legal and regulatory requirements when it implements processing for invoicing and accounting purposes.
 - (d) The data collected by the Company will only be kept for a time non longer than is necessary for the purposes for which data were processed, in accordance with applicable regulation.
 - (e) In this regard, customers data are kept for the time of the contractual relationship increased to 3 years without prejudice to preservation obligations or limitation periods. The accounting data will be kept within 10 years from the end of the accounting period.
 - (f) Under the conditions provided for in the Data Protection Act and regulation, natural persons enjoy the right of access to their personal data, of rectification, of interrogation, the right to restriction of processing, to data portability, and to erasure.
 - (g) The individuals concerned by data processing have also the right to object at any time, on grounds relating to their particular situation, to the personal data processed under the legal basis of the Company's legitimate interest, as well as the right to object to use of data for marketing purposes.
 - (h) Any person concerned has the right to lodge a complaint.

22. ANTI-BRIBERY AND CORRUPTION

- 22.1 Buyer represents, warrants and covenants that it and its Associated Persons have conducted, and will at all times conduct, its and their respective businesses in accordance with applicable laws, rules, regulations, decrees and/or official governmental orders of the country in which goods and/or services are provided hereunder relating to anti-bribery, anti-corruption and anti-money laundering.
- 22.2 Buyer and its Associated Persons shall maintain adequate procedures in furtherance of the foregoing. Buyer and its Associated Persons have not made, offered, promised to make or authorized the making of, and shall not make, offer or promise to make, or authorize the making of: (a) any payment or other transfer of anything of value if and to the extent that to do so is or would be in violation of or inconsistent with the principles or requirements of any anti-bribery, anti-corruption or anti-money laundering laws applicable to Company or to Buyer, or to their respective parent companies; or (b) any so-called "facilitation" or "grease" payments irrespective of local custom and even though in some countries such payments may be lawful.
- 22.3 Any failure to comply with this clause shall be a material breach of the Purchase Order not capable of remedy. "Associated Persons" means any person associated with Buyer including, but not limited to, Buyer's parents, subsidiaries and its and their respective owners, directors, officers, employees, agents, representatives, sub-contractors and suppliers.

23. MODERN DAY SLAVERY

- 23.1 The Buyer:
- (a) shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
 - (b) shall not require any Buyer employees or Subcontractor employees to lodge deposits or identity papers with the Employer or deny Supplier employee freedom to leave their employer after reasonable notice;
 - (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
 - (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
 - (e) shall make reasonable enquiries to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
 - (f) shall have and maintain its own policies and procedures to ensure its compliance with the Modern Slavery legislation within its own jurisdiction and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
 - (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
 - (h) shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
 - (i) shall not use, or allow its Subcontractors to use, child or slave labour;
 - (j) shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Company.
 - (k) In relation to reported instances, the Company reserves the right to request that the Buyer prepare and deliver to the Company, a slavery and human trafficking report setting out the steps it has taken to address the issue reported.
 - (l) At any time, the Company reserves the right to request that the Buyer prepare and deliver to the Company, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

Name (Print): _____
Company Name: _____
Signature: _____
Date: _____