

Terms and Conditions for Work Request

1. General

- 1.1 The "Contract" includes the work request, these terms and conditions, attached or provided separately, and any other documents incorporated by reference in that form (the Work Request), and any amendments to any of those documents agreed in writing by the University.
- 1.2 If there is any inconsistency between the Work Request and these terms and conditions, the Work Request prevails to the extent of that inconsistency.
- 1.3 In this Contract:

Contractor means the supplier named on the Work Request and its Personnel.

GST has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property means all intellectual property rights, including:

- a) rights in relation to patents, copyright, circuit layout rights, trade marks (including goodwill in those marks), business names and any right to have confidential information (including trade secrets and know-how) kept confidential and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;
- b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

Personnel means in relation to a party, any employee, officer, agent, or professional adviser of that party, and in the case of the Contractor, any subcontractor.

University means the Australian National University (ABN 52 234 063 906) and includes its Personnel.

Works means the work to be supplied under the Contract as specified in the Work Request;

University Representative means the supervisor identified on the Work Request.

- 1.4 In this Contract, unless the context otherwise requires: words importing one gender include any other gender; words importing the singular include the plural and vice versa; reference to a person includes a body politic, a body corporate and a natural person; and headings are for guidance only and do not affect the interpretation of the clauses they refer to.

2. Performance and Delivery

- 2.1 The performance and delivery of all Works must be made at the time, place, and in the manner, stated in the Work Request.
- 2.2 The University may reasonably specify in writing to the Contractor another time, place or manner for delivery or performance, in which case that other time, place or manner applies in place of that stated in the Work Request. Any additional cost incurred under section 2.2 must be agreed by both parties in writing.
- 2.3 The Contractor must inform the University Representative immediately on the completion of the Works.

3. Contractor Governance and Assurance

- 3.1 The Contractor must understand the expectations and satisfy the requirements outlined in the Facilities and Services Division Contractor Governance and Assurance Handbook which can be provided on request to pm.scheduler@anu.edu.au.

4. Quality and Compliance with Requirements

- 4.1 The Contractor must provide the Works with due skill, care and diligence and to the best of the Contractor's knowledge and expertise.
- 4.2 The Contractor must provide the Works as described in the Work Request to the reasonable satisfaction of the University.
- 4.3 The Contractor must comply with any requirements relating to the provision of Works as stated in the Work Request or as agreed in written variations to the Work Request with the University Representative.
- 4.4 Without limiting clauses 4.1, 4.2 and 4.3, all Works must be free from defects in materials and workmanship, be of merchantable quality and be fit for their purpose.
- 4.5 Notwithstanding any other right that the University has under this Contract, if, during the period of ninety (90) days commencing on the day of the completion of Works, it is discovered that the Works contain a defect, the Contractor must, at the request of the University:
 - a) replace that Works within five (5) business days or as agreed by University in writing from the day the Works were notified to the Contractor as being defective or some other time frame approved by the University; or
 - b) rectify the Works to the satisfaction of the University within ten (10) business days from the day the Works were notified to the Contractor as being defective or some other time frame approved by the University; or
 - c) reimburse the University for any replacement or rectification of the Works that the University obtains from a third party.
- 4.6 The Contractor must meet all costs associated with the discharge of its obligation in clause 4.5.
- 4.7 If, at any time, the Contractor becomes aware of any defect which will adversely affect, or will be likely to adversely affect, the performance or operation of Works, the Contractor must immediately notify the University Representative of that defect.
- 4.8 If the Contractor gives a notice referred to in clause 4.7, the Works are deemed to have a defect for the purposes of clause 4.5 and the Contractor must comply with its obligations set out in clauses 4.5 and 4.6.

5. Inspection and Acceptance

- 5.1 The University may inspect the performance and outcome of the Works at any time and for that purpose the Contractor must, at reasonable times, give the University Representative access to the premises at which the Works are being performed.
- 5.2 If there is a defect in the performance of the Works or the Works are not complete or the Work does not meet their purpose, the University may by notice require the Contractor to remedy the defect, rectify, complete or redo the Works, at no additional cost to the University within fourteen (14) business days.
- 5.3 Where the Contractor fails to meet clause 5.2 the University may perform or have performed the necessary work and recover the cost from the Contractor without prejudice to any other rights or remedies the University may have.

6. Site & Site Safety

- 6.1 The business hours of the University are Monday to Friday from 07.30am to 05.00pm.
- 6.2 The Contractor must gain written authorisation from the University Representative to work outside these hours.
- 6.3 The Contractor will be given reasonable access to the University site for the purpose of meeting its obligations under the Contract. Access to the University site will be restricted to the Contractor's Personnel identified to the University and each Personnel will be issued with an

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- identification pass by the University, unless otherwise agreed in writing by the University.
- 6.4 Access to any building of the University only confers on the Contractor a right to such use and control as is necessary to enable it to meet its obligations under the Contract. The Contractor must not commit any act of trespass in the carrying out of its obligations under the Contract.
- 6.5 If the location of the provision of Works is in close proximity to teaching activities of the University, all excessively noisy activities are to be carried out prior to 9.00am Monday to Friday or when adjacent teaching venues are vacant.
- 6.6 The Contractor will be deemed to have inspected the work site and to have allowed for all circumstances affecting the nature, scope or any other aspect of the work that are evident from site inspection.
- 6.7 The Contractor must make good, at their own cost, all fencing, roads, footpaths, and surface generally which may be disturbed by the cartage or other operations of the Contractor. The Contractor must return the site of the works and areas adjacent thereto to the state of repair before commencement of the works, and, as directed by the University from time to time during the term of the contract, remove from the site all rubbish, debris and waste resulting from the Contractor's activities.
- 6.8 The Contractor must obtain clearances from the University, and all other relevant ACT Government and commercial utilities suppliers prior to commencement of any excavation, trenching, demolition, or cutting and drilling of the building fabric. All costs associated with repairs or restoration of services caused by the Contractor's negligence or failure, including those of its employees or subcontractors, to obtain clearances will be borne by the Contractor.
- 6.9 The Contractor must check the Hazardous Materials Register (available at <https://services.anu.edu.au/campus-environment/building-management>) which identifies the hazardous materials for all building on campus.
- 6.10 If the Contractor encounters asbestos while delivering the Works, all Works in the area is to cease and all Personnel (of the Contractor and University) are to be evacuated. The University is to be immediately advised for further action. A return to the site will be at the University's discretion.
- 6.11 The Contractor must ensure that the safety of the site will be maintained to comply with University's work health and safety policy (available at <https://services.anu.edu.au/human-resources/health-safety>)
- 7. Parking**
- 7.1 Parking restrictions apply at the University site and the Contractor must ensure that its Personnel is alerted to parking restrictions, as advised on signage at the University site. Parking arrangements are the responsibility of the Contractor and its Personnel.
- 7.2 The parking information is available at <https://services.anu.edu.au/campus-environment/transport-parking>
- 8. Contractor Induction**
- 8.1 The Contractor must ensure all its personnel complete an online induction available on the University's website at <https://services.anu.edu.au/training/contractor-induction>.
- 8.2 The Contractor must ensure its conduct is in accordance with the guidelines contained in that online induction.
- 9. Fees**
- 9.1 The fee for the Works is the fee agreed between Contractor and the University Representative and includes:
- all taxes (including GST), duties and other imposts for which the Contractor is liable;
 - all insurance costs;
 - all amounts payable for the use thereof (whether in the course of manufacture or use of the patents, copyright, registered designs, trademarks and other intellectual property rights); and
 - all charges for supply of the Works, including testing, inspection, packing, delivery or otherwise.
- 9.2 The University must pay to the Contractor the fees within thirty (30) days, subject to :
- clause 10; and
 - acceptance of the Works by the University.
- 9.3 The Contractor must provide a correctly rendered invoice in accordance with clause 10.
- 9.4 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the University to the Contractor under this Contract.
- 10. Invoicing Requirement**
- 10.1A correctly rendered invoice must include the following:
- the Contractor's name, address and ABN;
 - the amount of GST applied;
 - The Work Request number provided by the University;
 - A description of supplies and period covered;
 - The quote number and date provided by the Contractor;
 - An itemised list of labour and material cost; and
 - Any certification or report requested by the University.
- 10.2 The invoice must comply with the requirements of the GST law.
- 10.3 The invoice must be submitted via email to invoice.workflow@anu.edu.au in one of the format, being PDF, DOC, DOCX, XLS, XLSX.
- 11. Intellectual Property**
- 11.1 Ownership of all Intellectual Property created under the Contract and relating to the Works vests from the time of creation in the University.
- 11.2 The Contractor must not use, disclose, copy or reproduce that Intellectual Property except for the purposes of the Contract.
- 11.3 The Contractor must at all times indemnify the University, its officers, employees, agents and sub-licensees, from and against all loss, damage, costs (including legal costs and expenses on a solicitor/own client basis), compensation and expenses arising out of the infringement or alleged infringement of any third party Intellectual Property, by reason of the purchase, possession or use of the Works.
- 12. Assignment and Subcontracting**
- 12.1 The Contractor must not, without the consent in writing of the University Representative, assign its rights and/or obligations under this Contract or subcontract any part of the performance of this Contract.
- 13. Applicable Law**
- 13.1 This Contract shall be construed and take effect in accordance with the laws in the Australian Capital Territory.
- 13.2 The Contractor shall ensure that it complies with all relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority.
- 14. Termination for Insolvency**
- 14.1 Without prejudice to its rights at common law, the University may, by notice in writing to the Contractor, terminate the Contract if the Contractor:
- becomes bankrupt or insolvent; being a partnership, becomes dissolved; makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver or receiver and manager appointed; goes into liquidation or passes a resolution to go

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into liquidation, otherwise than for the purpose of reconstruction; or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise; or suffers any execution against its assets; or

b) fails:

- i to commence performance of the Contract or to proceed at a rate of progress so as to ensure the due and proper completion of the Contract; or
- ii to take action to remedy a breach of any other obligation under the Contract within seven (7) days of being given notice by the University requiring the Contractor to remedy the breach; or
- iii to remedy a breach referred to in this paragraph within fourteen (14) days of being given the notice referred to; or

c) assigns its rights otherwise than in accordance with the requirements of the Contract.

14.2 Where, before termination of the Contract under clause 15.1, the University has made any payment in advance on account of the contract price to the Contractor, the total amount of that payment must be repaid by the Contractor to the University on termination and, if not repaid is recoverable by the University from the Contractor as a debt.

14.3 If the Contract is terminated under this clause:

- i the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination; and
- ii rights to recover damages are not affected.

15. Termination for Convenience

15.1 The University may at any time give notice in writing to the Contractor to terminate the Contract or any part without cause.

15.2 On receipt of the notice, the Contractor must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.

15.3 If this Contract is terminated in accordance with the provisions of this clause, the University will be liable only for:

- i fees under the fees provisions of this Contract for the Works rendered before the effective date of termination; and
- ii any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Contract.

15.4 The aggregate of any compensation and any sums paid or due or becoming due to the Contractor under the Contract will not exceed the contract price payable under the Contract.

15.5 Under no circumstances will the University be liable to the Contractor for any loss of profit or for indirect or consequential losses whatsoever.

16. Consequences of Termination

16.1 In the event of termination for any reason, all rights of the Contractor granted under the Contract will terminate and the Contractor must cease to use the University's Intellectual Property in any manner whatsoever. The Contractor must deliver up to the University all copies of the University's Intellectual Property in the possession, custody or control of the Contractor.

17. Confidentiality

17.1 The Contractor must treat, and require its Personnel to treat, all confidential information of the University given in connection with the Contract and identified as having, or marked with, a classification indicating its confidentiality, according to that classification. This clause does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of this clause.

18. Indemnity and Insurance

18.1 The Contractor must at all times indemnify the University, its officers, employees and agents ("those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by breach of this Contract or any wilful, unlawful or negligent act or omission of the Contractor, its officers, employees, agents or subcontractors in connection with the Contract.

18.2 The Contractor's liability to indemnify the University shall be reduced proportionately to the extent that any act or omission of the Contractor's personnel contributed to the loss or liability.

18.3 The Contractor must have and maintain insurance cover sufficient to cover any loss or costs that may be incurred and for which the Contractor is liable in connection with the supply of the Works, including, as applicable, product liability insurance, public liability, professional indemnity insurance and worker's compensation insurance.

18.4 The Contractor will provide evidence of insurance at the request of the University during the term of this Contract.

19. Waiver

19.1 A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right.

19.2 A waiver is not effective unless in writing.

20. No consequential loss

20.1 The University will not under any circumstances be liable to the Contractor for any loss of profit or for any loss of a consequential nature whatsoever by the Contractor.

21. Dispute Resolution

21.1 Before resorting to external dispute resolution mechanisms, the Contractor and University will attempt to settle by negotiation any dispute in relation to the Contract including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

21.2 In the event the dispute remains unresolved after ten (10) business days of the notification of the dispute, the Contractor and University will submit the dispute to a mediator to be agreed.

21.3 If a dispute is not settled within a further thirty (30) business days of referral under clause 25.2, the dispute may be the subject of court proceedings.

21.4 Notwithstanding the existence of a dispute, the Contractor and the University will continue to perform their obligations under the Contract.

21.5 A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.

21.6 This clause will survive the expiration or termination of the Contract.

22. Relationship

22.1 The Contractor is an independent contractor of the University. Nothing in this Contract constitute any other type of relationship between the parties.

23. Acceptance by Contractor

23.1 Upon the Contractor's acceptance (whether in writing or by conduct) of the Work Request, the Contractor agrees to these terms and conditions.

23.2 No additional conditions proposed by the Contractor apply to the provision of the Works unless agreed in writing in the content of the Work Request by the University.