

Terms and Conditions for Purchase of Goods and/or Services

1. General

- (a) These Terms and Conditions apply to the order for Supplies placed by the University as described in the attached Purchase Order, which together form the Contract.
- (b) No additional conditions proposed by the Supplier apply to the provision of the Supplies unless agreed in writing by the University.
- (c) If there is any inconsistency between the Purchase Order and these Terms and Conditions, the Purchase Order prevails to the extent of that inconsistency.

2. Offer and Acceptance

- (a) The Supplier is taken to have accepted a Purchase Order if it notifies the University that it accepts the Purchase Order or delivers the Supplies described in the Purchase Order.
- (b) If the Supplier is unwilling or unable to accept the Purchase Order, it must notify the University promptly. Any proposed variation to the Purchase Order must first be approved in writing by the University before delivery.
- (c) The Purchase Order, once accepted, combined with these Terms and Conditions and any attachment expressly incorporated in writing will form a binding Contract between the University and the Supplier and the Supplier must provide the Supplies in accordance with this Contract.

3. Cancellation and Variations

- (a) The University may at any time before delivery vary or cancel a Purchase Order.
- (b) If the University cancels a Purchase Order and the Supplier establishes to the University's satisfaction the Supplier already incurred expense in arranging for the order or delivery of the Supplies specified in the Purchase Order, the University agrees to pay the Supplier's reasonable costs or expenses incurred.
- (c) Cancellation of a Purchase Order will terminate the Contract.
- (d) If the University varies the Purchase Order and the variation causes a change in the cost of the Supplies or time required to deliver the Supplies, the Supplier must promptly notify the University of the change in price and/or delivery time. If the University agrees, the Purchase Order will be varied by the University to reflect the agreed change to the cost and/or delivery times.

4. Delivery, Acceptance and Title

- (a) The delivery of all Goods and the performance of all Services must be made at the time, place, and in the manner, stated in the Purchase Order (or if no time is specified, as soon as practicable and in any event within a reasonable time).
- (b) Goods must be packed, marked and labeled to ensure their safe delivery and safe handling by the University after delivery and, if specific packing, marking or labeling is required under the Purchase Order, comply with those requirements.
- (c) Payment of any invoice by the University will not be deemed acceptance of the Supplies, but rather such Supplies will be subject to a 30 day period of inspection, testing, acceptance or rejection by the University, unless stated otherwise in the Purchase Order.
- (d) If the University rejects the Supplies, University will notify the Supplier of the reasons for rejection and the remedy the University requires. The Supplier must comply with such notice at no additional cost to the University.
- (e) No payment will be due for rejected Supplies until their acceptance.
- (f) Property in the Goods will pass to the University on delivery to the location on the University premises specified in the Purchase Order. Risk in the Goods will pass to the University at the end of the period outlined in clause 4(c), on the condition that the University has not rejected the Goods, in accordance with this Contract.

5. Performance and Quality

The Supplier warrants that:

- (a) It will provide the Supplies with due skill, care and diligence;
- (b) It will comply with any requirements relating to the provision of Services as stated in the Purchase Order and all Goods will conform to any specifications stated in the Purchase Order, and if none specified, the Goods must comply with clause 5(e);
- (c) Where it licenses any Intellectual Property to the University under this Contract, that it is entitled to do so, and that the University's use of Contract Materials under this Contract will not infringe the Intellectual Property Rights of any person;
- (d) If applicable, the Supplies will meet any agreed design and performance criteria and correspond with any sample;
- (e) All Goods will be free from defects in materials and workmanship, be of merchantable quality and be fit for their purpose and all Services must be free from defects in performance, meet their purpose and be complete and accurate;
- (f) In addition to the warranties set out in this clause 5 and without limiting any other warranty given by the

Terms and Conditions for Purchase of Goods and/or Services

Supplier pursuant to this Contract, if the University gives notice of any defect or omission discovered in the Supplies, the Supplier must correct that defect or omission without delay and at no cost to the University;

- (g) The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs;
- (h) The warranties in this clause 5 are in addition to any statutory warranties applicable to the Supplies.

6. Intellectual Property Rights

- (a) Intellectual Property Rights in Goods provided under this Contract or Background Intellectual Property rights will not change as a result of this Contract.
- (b) The Supplier grants the University a licence in any such Intellectual Property rights provided as part of the Supplies to allow the University full use of the Supplies for their intended purpose.
- (c) Other than as set out above, the University owns the Intellectual Property rights in any Material created under this Contract.

7. Modern Slavery

In performing its obligations under the Contract, the Supplier must:

- (a) Take reasonable steps to identify, assess and address the risk of Modern Slavery practices in the operations and supply chains used in the delivery of the Supplies;
- (b) If it becomes aware of any Modern Slavery practices in the operations and supply chains used in its performance of the Contract, as soon as reasonably practicable:
 - (i) take all reasonable action to address or remove these practices;
 - (ii) promptly notify the University of the Modern Slavery practices and provide any relevant information requested by the University; and
 - (iii) provide updates to the University of its progress to address or remove the Modern Slavery practices.
- (c) Ensure that each of its suppliers and subcontractors complies with the terms of this clause 7;
- (d) If requested by the University, provide the University with a report in the form specified by the University, setting out the steps it has taken to comply with the requirements of this clause.

8. Conflict of Interest

The Supplier warrants that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract which has not already been advised to the University in writing and consented to by the University. The Supplier agrees to notify the University immediately in writing if a conflict or risk of such arises during the term of the Contract and take reasonable steps to resolve or deal with the conflict. If the Supplier is unable or unwilling to resolve or deal with the conflict, the University may terminate the Contract in accordance with clause 19.

9. Assignment and Subcontracting

- (a) The Supplier must not, without the consent in writing of the University, assign its rights under this Contract or subcontract any part of the performance of this Contract.
- (b) Where the Supplier subcontracts any of its obligations under this Contract, the Supplier remains liable for carrying out and completing those obligations.

10. Governing Law

The laws of the Australian Capital Territory apply to the Contract.

11. Fees and Invoices

- (a) In consideration for the provision of the Supplies under this Contract, the University agrees to pay to the Supplier the Fees specified in the Purchase Order.
- (b) The University agrees to pay the Supplier the Fees within 30 days of receipt of a correctly rendered tax invoice and acceptance of the Supplies by the University.
- (c) Subject to clause 12, the Fees set out in the Purchase Order are fixed, inclusive of all taxes and other expenses and costs, and are the only amount the University is required to pay in relation to the Supplies under this Contract.
- (d) The University may withhold from payment any invoiced amount that it disputes in good faith until the dispute is resolved.
- (e) The University is entitled to set off any amount owed to the Supplier against any amount payable by the Supplier at any time in connection with this Contract.
- (f) The Supplier must issue the University with a correctly rendered tax invoice and must:
 - (i) contain the Supplier's name, address and ABN;
 - (ii) contain pre-GST amounts, the amount of GST applied and the total price payable by the University;
 - (iii) contain the contract number, purchase order number or UID provided by the University (if any);
 - (iv) contain the name of the University Contract Manager;
 - (v) contain an itemised list of the Fees payable together with any substantiating material required;

Terms and Conditions for Purchase of Goods and/or Services

- (vi) contain an itemised list of the amount of any allowances and costs to be paid by the University together with any substantiating material required;
- (vii) comply with the requirements of the GST law;
- (viii) specify the period covered by the invoice; and
- (ix) contain any other information reasonably requested by the University from time to time.

12. GST

- (a) Unless stated otherwise in the Contract, the Fees for the Supplies are stated as exclusive of GST.
- (b) The Party liable to pay for a taxable supply to which this clause applies must also pay the amount of any GST payable in respect of the taxable supply on the date that the payment for the taxable supply is due.
- (c) A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

13. Confidentiality and Disclosure of Information

- (a) A party, its employees, agents or sub-contractors must not disclose or make public any Confidential Information provided by the other party without the prior approval in writing of the other party.
- (b) On the earlier of the expiration or termination of the Contract, the Supplier must deliver to the University (and not retain any copies of) all material forms of Confidential Information provided to the Supplier by the University and allow the University to audit its compliance with this clause.
- (c) A party is permitted to disclose any Confidential Information:
 - (i) to the extent required by law;
 - (ii) if required in connection with legal proceedings;
 - (iii) for public accountability reasons;
 - (iv) for any other reporting requirements of the party; or
 - (v) to the party's staff and contractors to the extent required to enable performance of the obligations created by the Contract.

14. Conduct on University Premises and Work Health and Safety

- (a) The University must provide the Supplier with access to its premises and facilities as reasonably necessary to enable the Supplier to provide the Supplies.
- (b) The Supplier and its employees, subcontractors and agents must, when using the University's premises or facilities:
 - (i) comply with all legislation, rules, policies, procedures and other requirements related in any way to the provision of the Supplies (WH&S Laws);
 - (ii) comply with all reasonable directions of the University;
 - (iii) assist the University in discharging its obligations under the WH&S Laws, and not do anything which would cause the University to breach its obligations under the WH&S Laws;
 - (iv) comply with the University policies and procedures, including but not limited to those relating to occupational health, safety and security;
 - (v) on the University's request, promptly provide evidence of all relevant insurance, licences, qualifications and registration required to provide the Supplies; and
 - (vi) promptly notify the University of any accident or injury that occurs while providing the Supplies.

15. Compliance with Laws

- (a) The Supplier must, in carrying out the Contract, comply with all relevant laws and any requirements of relevant authorities.
- (b) The Supplier acknowledges that the University has obligations to the Commonwealth Auditor-General and the Australian Information Commissioner, and agrees to assist the University in complying with those obligations when reasonably requested.
- (c) The Supplier acknowledges the University has obligations under Freedom of Information legislation, and where the University receives a request under this legislation, the Supplier agrees to provide reasonable assistance to the University in relation to the request.

16. Privacy

- (a) In providing the Supplies, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the University would breach an Australian Privacy Principle as defined in that Act.

17. Indemnity and Insurance

- (a) Subject to the Contract, the Supplier 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 any willful, unlawful or negligent act or omission of the Supplier, its

Terms and Conditions for Purchase of Goods and/or Services

officers, employees, agents or subcontractors in connection with the Contract.

- (b) The Supplier's liability to indemnify the University under clause 17(a) will be reduced proportionally to the extent that any wrongful, unlawful or negligent act or omission of the University or its officers, employees or agents caused the Loss or liability.
- (c) The University may enforce the indemnity in clause 17(a) in favour of any of those indemnified for the benefit of each of those indemnified in the name of the University or of those indemnified.
- (d) If payment under an indemnity to the University gives rise to a liability for the University to pay GST, the Supplier must pay and indemnify the University against the amount of such GST.
- (e) Except where otherwise agreed in writing by the parties, the Supplier must have and maintain:
 - (i) public and products liability insurance to the amount of \$20,000,000 per occurrence and in the aggregate;
 - (ii) where the Supplier is providing professional Services of an advisory nature, professional indemnity insurance to the amount of \$20,000,000 per occurrence and in the aggregate, and where held on a claims made basis, maintain for a period of seven (7) years from the date of this Contract; and
 - (iii) workers compensation insurance as required by law,to cover the performance of its obligations under the Contract and must provide written proof of maintenance of such insurance to the University on request.
- (f) The Supplier must ensure that any subcontractor engaged by it is insured to a level commensurate with the insurance obligations of the Supplier under this Contract.

18. Waiver

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.

19. Termination

- (a) The University may terminate this Contract immediately by:
 - (i) written notice to the Supplier if the Supplier breaches a term of this Contract where such breach is, in the opinion of the University, capable of remedy, and the Supplier fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so;
 - (ii) written notice to the Supplier if the Supplier breaches a term of this Contract which is not, in the opinion of the University, capable of remedy;
 - (iii) written notice to the Supplier if the Supplier ceases, or threatens to cease, to carry on its business;
 - (iv) written notice to the Supplier giving fourteen (14) days' notice of termination for convenience; or
 - (v) cancellation of a Purchase Order in accordance with clause 3.
- (b) If this Contract is terminated in accordance with the provisions of this clause, the University will be liable only for:
 - (i) payments for the Supplies provided before the effective date of termination, provided those Supplies have been provided in accordance with this Contract and the Supplier is not otherwise in breach of this Contract.

20. No consequential loss

- (a) The University will not under any circumstances be liable to the Supplier for any loss of profit or for any loss of a consequential nature whatsoever by the Supplier.

21. Dispute Resolution

- (a) Before resorting to external dispute resolution mechanisms, the Supplier 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.
- (b) In the event the dispute remains unresolved after ten (10) working days of the notification of the dispute, the Supplier and University will submit the dispute to a mediator to be agreed.
- (c) If a dispute is not settled within a further thirty (30) working days of referral under clause 21(b), the dispute may be the subject of court proceedings.
- (d) Notwithstanding the existence of a dispute, the Supplier and the University will continue to perform their obligations under the Contract.
- (e) A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.
- (f) This clause will survive the expiration or termination of the Contract.

22. Relationship

- (a) The Supplier is an independent contractor of the University. Nothing in this Contract constitutes any other type of relationship between the parties.

23. Definitions

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- (a) In these Terms and Conditions, unless the contrary is expressly provided:

Confidential Information means all data and/or information exchanged between the parties for the purposes of this Contract before, on or after the date of this Contract (including the terms of this Contract) relating to the operation, business, research and technology of the disclosing party;

Contract Material means all Material created or required to be developed or created as part of, or for the purpose of providing, the Supplies;

Fees means the fees for the Supplies set out in the Purchase Order;

Loss means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Material includes property, information, data, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property;

Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth);

University means the Australian National University (ABN 52234 063 906) established under the *Australian National University Act 1991* (Cth);

Goods mean the articles, goods, material or parts thereof to be supplied under the Contract as specified in the Purchase Order;

GST has the same meaning as in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property Rights means all rights under statute, commonlaw or equity in relation to inventions (including patents), copyright, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, confidential information (including trade secrets and know-how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Privacy Act means the *Privacy Act 1988* (Cth);

Purchase Order means the purchase order that incorporates these terms and conditions;

Services mean the services to be performed under the Contract as specified in the Purchase Order;

Supplier means the person named on the Purchase Order who is to supply the Supplies to the University, and where the Supplier includes more than one person, those persons jointly and severally; and

Supplies mean the Goods and/or Services.

- (b) 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.