

## 1. General

- 1.1 The "Contract" includes these terms and conditions, the purchase order form, attached or provided separately, and any other documents incorporated by reference in that form ("the Purchase Order"), and any amendments to any of those documents agreed in writing by the University.
- 1.2 No additional conditions proposed by the Supplier apply to the provision of the Supplies unless agreed in writing by the University.
- 1.3 If there is any inconsistency between the Purchase Order and these terms and conditions, the Purchase Order prevails to the extent of that inconsistency.
- 1.4 In this Contract:  
**University** means the Australian National University (ABN 52 234 063 906) established under the *Australian National University Act, 1991 (Commonwealth)*;  
**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** means all rights under statute, common law 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;  
**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.
- 1.5 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 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.
- 2.2 The University may reasonably specify in writing to the Supplier 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 Purchase Order.
- 2.3 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.
- 2.4 Time is of the essence.

## 3. Quality and Compliance with Requirements

- 3.1 The Supplier must provide the Supplies with due skill, care and diligence.
- 3.2 The Supplier must comply with any requirements relating to the provision of Services as stated in the Purchase Order and all Goods must conform to any specifications relating to the Goods as stated in the Purchase Order.
- 3.3 Without limiting clauses 3.1 and 3.2, all Goods must 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.

## 4. Inspection and Acceptance

- 4.1 Services
- 4.1.1 The University may inspect the performance and outcome of the Services at any time and for that purpose the Supplier must, at reasonable times, give the University's representatives access to the premises at which the Services are being performed. If there is a defect in the performance of the Services or the Services are not complete, the University may by notice require the Supplier to remedy the defect, or

complete the Services, at no additional cost to the University. If the Services do not meet their purpose or are not in accordance with the Contract, the University may by notice require the Supplier to redo the Services at no additional cost to the University. Where the Supplier fails to remedy a defect in the performance of the Services, complete the Services, or redo the Services, within fourteen (14) days after notification by the University under this clause, the University may perform or have performed the necessary work and recover the cost from the Supplier without prejudice to any other rights or remedies the University may have.

## 4.2 Goods

- 4.2.1 The University may inspect the Goods at any time prior to acceptance and reject any Goods found not to be in accordance with the Contract. After acceptance the University may reject any Goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.
- 4.2.2 The University will not be liable to pay for any rejected Goods or for any damage or costs arising from inspection or rejection of Goods.
- 4.2.3 If the University rejects any Goods, the Supplier must, without prejudice to the University's rights otherwise arising under the Contract or the general law, comply with a requirement of the University to:
  - (a) replace, without cost to the University, the rejected Goods with Goods complying in all respects with the Contract;
  - (b) refund any payment for the rejected Goods; or
  - (c) repair the Goods, on site or otherwise, to the satisfaction of the University;and, in the case of (a) or (b), remove the rejected Goods at the Supplier's expense.
- 4.2.4 Without additional cost to the University, the Supplier must provide access to premises and all other necessary assistance for the University's representatives to inspect the manufacture of the Goods.
- 4.2.5 If the University requires the Supplier to submit samples of Goods, the Supplier must not proceed to bulk manufacture until the University has approved the samples.

## 5. Title

- 5.1 Title in, and risk of loss of or damage to, the Goods passes to the University on delivery or payment, whichever is earlier.

## 6. Warranty

- 6.1 In addition to the warranties set out in clause 3 and without limiting any other warranty given by the 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.
- 6.2 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

## 7. Inclusive Price

- 7.1 The price of the Supplies is the price set out in the Purchase Order. The price stated in the Purchase Order is firm and fixed (unless varied with the consent of the University in writing) and includes:
  - (a) all taxes (including GST), duties and other imposts for which the Supplier is liable;
  - (b) all insurance costs;
  - (c) all amounts payable for the use thereof (whether in the course of manufacture or use of the patents, copyright, registered designs, trade marks and other intellectual property rights);
  - (d) all charges for supply of the Goods or the performance of the Services; and
  - (e) all charges for testing, inspection, packing, delivery or otherwise.

## 8. Intellectual Property

- 8.1 Ownership of all Intellectual Property created under the Contract and relating to the Supplies vests from the time of creation in the University.
- 8.2 The Supplier must not use, disclose, copy or reproduce that Intellectual Property except for the purposes of the Contract.

- 8.3 The Supplier 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 Intellectual Property, by reason of the purchase, possession or use of the Goods or the provision or outcomes of the Services.
- 9. Assignment and Subcontracting**
- 9.1 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.
- 10. Applicable Law**
- 10.1 This Contract shall be construed and take effect in accordance with the laws in force for the time being in the State or Territory of Australia in which the Goods or Services are provided under the Contract.
- 10.2 The Supplier shall ensure that the work done under this Contract complies with the laws from time to time in force in the State or Territory in which the work under this Contract is to be performed.
- 11. Payment**
- 11.1 Subject to clause 4.2.2, the University must pay for the Supplies no later than the end of the month following:
- title in the Goods (if applicable) being passed to the University and the Goods being accepted by the University;
  - satisfactory completion of the Services (if applicable); or
  - receipt of a correctly rendered invoice; whichever is the later.
- 11.2 An invoice will be correctly rendered if it:
- is addressed in accordance with the Purchase Order;
  - identifies the Purchase Order;
  - is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
  - is, where required by Australian law, a valid Tax Invoice within the meaning of the GST Act.
- 12. Termination for Insolvency or Breach**
- 12.1 Without prejudice to its rights at common law, the University may, by notice in writing to the Supplier, terminate the Contract if the Supplier:
- 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 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
  - 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 Supplier to remedy the breach; or to remedy a breach referred to in this paragraph within fourteen (14) days of being given the notice referred to; or
  - assigns its rights otherwise than in accordance with the requirements of the Contract.
- 12.2 Where, before termination of the Contract under clause 12.1, the University has made any payment in advance on account of the contract price to the Supplier, the total amount of that payment must be repaid by the Supplier to the University on termination and, if not repaid is recoverable by the University from the Supplier as a debt.
- 12.3 If the Contract is terminated under this clause:
- the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - rights to recover damages are not affected; and
- the Supplier must indemnify the University in respect of any loss it incurs in purchasing similar Goods and/or Services from other suppliers.
- 13. Termination for Convenience**
- 13.1 The University may at any time give notice in writing to the Supplier to terminate the Contract or any part without cause.
- 13.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.
- 13.3 If this Contract is terminated in accordance with the provisions of this clause, the University will be liable only for:
- payments under the payment provisions of this Contract for the Supplies rendered before the effective date of termination; and
  - any reasonable costs incurred by the Supplier and directly attributable to the termination or partial termination of this Contract.
- 13.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under the Contract will not exceed the contract price payable under the Contract.
- 13.5 If this clause is invoked, it will prevail over other inconsistent provisions.
- 14. Consequences of Termination**
- 14.1 In the event of termination for any reason, all rights of the Supplier granted under the Contract will terminate and the Supplier must cease to use the University's Intellectual Property in any manner whatsoever. The Supplier must deliver up to the University all copies of the University's Intellectual Property in the possession, custody or control of the Supplier.
- 15. Confidentiality**
- 15.1 The Supplier must treat, and require its employees, agents and subcontractors 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.
- 16. Compliance with the University's Policies**
- 16.1 The Supplier must, when using the University's premises or facilities, comply with all reasonable directions of the University and all Statutes, Rules, Orders, procedures and policies of the University, including but not limited to those relating to occupational health (including the University's smoke free workplace policy), safety and security in effect at those premises or in regard to those facilities, whether specifically drawn to the attention of the Supplier or as notified by the University or as might reasonably be inferred from the use to which the premises or facilities are being put.
- 17. Compliance with Laws**
- 17.1 The Supplier must, in carrying out the Contract, comply with all relevant laws and any requirements of relevant authorities.
- 18. Indemnity**
- 18.1 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 officers, employees, agents or subcontractors in connection with the 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. 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 Supplier for any loss of profit or for any loss of a consequential nature whatsoever by the Supplier.
- 21. Insurance**
- 21.1 The Supplier must have and maintain insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply

of the Goods and/or Services, including, as applicable, product liability insurance, public liability and professional indemnity insurance.

21.2 The Supplier will provide evidence of such insurance at the request of the University during the term of this Contract.

## **22. Dispute Resolution**

22.1 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.

22.2 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.

22.3 If a dispute is not settled within a further thirty (30) working days of referral under clause 22.2, the dispute may be the subject of court proceedings.

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

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

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

## **23. Entire Understanding**

23.1 Unless the University specifies that another contract shall govern the relationship between the Supplier and the University in relation to the Supplies, this Contract contains the entire agreement and understanding between the University and the Supplier on everything connected with the subject matter of this Contract and supersedes any prior agreement or understanding on anything connected with that subject matter.

## **24. Relationship**

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

## **25. Acceptance by Supplier**

25.1 Upon the Supplier's acceptance (whether in writing or by conduct) of the Purchase Order, the Supplier agrees to these terms and conditions.