

TERMS AND CONDITIONS OF SALE AND PROVISION OF SERVICES

1. Sale of goods / Provision of services

- 1.1 Monash University ("**Monash**") provides the goods and/or services subject to these terms and conditions, unless otherwise agreed in writing ("**Conditions**").
- 1.2 When a person makes an offer or order to purchase goods and/or services ("**the Purchaser**") and that offer or order is accepted by Monash, the Purchaser agrees and acknowledges that these Conditions will be binding on both Parties for the purposes of the sale of the goods and/or provision of services.
- 1.3 These Conditions may only be amended or varied by written agreement signed by both Parties.

2. Orders

- 2.1 Information provided by Monash in respect of the goods and/or services (including price lists) does not constitute an offer to sell but an invitation to treat only.
- 2.2 An order or offer to purchase is an offer to purchase goods and/or services at the price set by Monash as at the date of delivery (plus delivery and other applicable charges).
- 2.3 Monash reserves the right to accept or reject any order (in whole or in part) for any reason.
- 2.4 Without limiting clause 2.3, Monash may reject an order or offer if the Purchaser's application for credit is rejected, the Purchaser fails to pay for other goods and/or services ordered, the goods are unavailable, there is an error in the price or the description of goods and/or services, or an error in the order.

3. Specifications

Monash reserves the right to change the specifications of goods and/or services from time to time without notification to the Purchaser.

4. Price

- 4.1 Unless otherwise notified by Monash in writing, all prices for goods and/or services –
 - (a) are in Australian dollars;
 - (b) are subject to change without notice; and
 - (c) exclude delivery and other applicable charges.
- 4.2 Unless otherwise agreed in writing, the price payable for the goods and/or services is the price set by Monash at the date of delivery (plus delivery and other applicable charges).

5. Payment

- 5.1 The Purchaser must pay the price (and delivery and other applicable charges) for the goods and/or services in accordance with the payment terms specified on the invoice provided by Monash. Monash reserves the right to pass on to the Purchaser all costs associated with

particular forms of payment (for example merchant fees charged on credit card payments). Where a payment is due on a weekend or public holiday in Victoria, payment is required by the preceding working day.

- 5.2 Where the Purchaser fails to make full payment by the due date, Monash may, in its absolute discretion -
- (a) refuse to supply the Purchaser with further goods and/or services; or
 - (b) require the Purchaser to pay for further goods and/or services in full prior to delivery.
- 5.3 Time is of the essence in respect of the Purchaser's obligation to make payment for goods and/or services.
- 5.4 Any payments the Purchaser makes to Monash will be applied as follows:
- (a) first, as reimbursement in accordance with clause 13.3(b) for any collection costs and expenses incurred;
 - (b) second, in payment of any interest charged to the Purchaser in accordance with clause 13.3(a); and
 - (c) third, in satisfaction or part satisfaction of the oldest portion of the Purchaser's account.
- 5.5 Where Monash owes a debt to the Purchaser, Monash may deduct (set-off) the amount of that debt against any amount paid to Monash by the Purchaser.

6. GST

Unless otherwise stated, all amounts payable for the goods are expressed exclusive of any goods and services tax ("**GST**"). Monash reserves the right to recover from the Purchaser all GST payable in respect of the supply of the goods and/or services.

7. Delivery

- 7.1 If the Purchaser claims that the goods were defective, short delivered or otherwise not the goods specified in the order, the Purchaser must notify Monash in writing (including sufficient particulars) within seven (7) days of delivery. If the Purchaser fails to notify Monash within this time, the goods will be treated as having been accepted by the Purchaser and Monash will be discharged from any liability in respect of the goods being wrong or defective or short delivered.
- 7.2 Monash will make all reasonable efforts to deliver the goods within the times agreed, however the Purchaser acknowledges that all quoted delivery times are estimates only and failure to deliver by those time will not constitute a breach of these Conditions. Monash will not be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery. The Purchaser will not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- 7.3 Delivery occurs when the goods are first left with the Purchaser (or at the Purchaser's premises or other agreed place). Monash is not required to obtain the Purchaser's signature as proof of delivery. Upon delivery, all risk in the goods passes to the Purchaser.

8. Title to goods

- 8.1 Ownership in the goods remains with Monash and title does not pass to the Purchaser until Monash has received payment in full for the goods and all sums owing on Purchaser's accounts with Monash.
- 8.2 From the time the goods are delivered to the Purchaser until the time title passes to the Purchaser in accordance with clause 8.1, the Purchaser takes custody of the goods and retains them as the bailee of Monash.
- 8.3 If the Purchaser fails to pay Monash for the goods by the due date for payment, the Purchaser (without prejudice to any other right or remedy Monash may have) agrees to deliver the goods to Monash upon demand, and consents to Monash entering the premises at which the goods are stored and retaking possession of the goods.

9. Recalls

In the event of a product recall over the goods, the Purchaser agrees to give Monash such assistance as is reasonably required in relation to that recall.

10. Certificates

In the absence of manifest error -

- (a) the written records of Monash in relation to a delivery of goods will be conclusive evidence of the type and quantity of goods delivered and the date and time of delivery; and
- (b) certification from a Monash authorised representative will be conclusive evidence of the amount owed for the goods.

11. Exclusion of warranties and liability

- 11.1 Monash gives no express warranty in relation to the goods and/or services. To the fullest extent permitted by law, all conditions and warranties, whether express or implied by law or otherwise, which may be binding on Monash are excluded.
- 11.2 Where a condition or warranty cannot be lawfully excluded, the sole liability of Monash for any breach of that condition or warranty is limited, at Monash's election, to -
- (a) replace or repair the goods (including the possible replacement with equivalent goods);
 - (b) payment of the cost of replacing or remaining the goods (including purchasing or acquiring equivalent goods); or
 - (c) re-performing any non-conforming services.
- 11.3 The Purchaser agrees and acknowledges that it has not relied on the skill or judgment of Monash as to whether the goods and/or services are reasonably fit for any purpose.
- 11.4 Any description of the goods and/or services contained in the order or any other document is given by way of identification only.

11.5 Except to the extent that it cannot be lawfully excluded, Monash will not be liable to any person for any loss or damage (consequential or otherwise) suffered or incurred by that person:

- (a) in relation to the goods and/or services; and
- (b) caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods and/or services.

12. Indemnity

12.1 To the fullest extent permitted by law, the Purchaser indemnifies Monash and agrees to keep Monash indemnified, against all loss, liability, costs (including legal costs) and expenses arising directly or indirectly as a result of or in connection with the supply of goods and/or services.

12.2 The liability of the Purchaser in clause 12.1 is reduced proportionately to the extent that Monash has contributed to the loss, liability, cost or expense.

13. Default

13.1 The Purchaser will be in default if the Purchaser breaches these Conditions.

13.2 Without limiting clause 13.1, the Purchaser breaches these Conditions if -

- (a) payment in full for the goods and/or services is not made by the due date;
- (b) the Purchaser attempts to assign or transfer the benefit of these Conditions without obtaining the consent of Monash;
- (c) if the Purchaser is an individual and declares or commits an act of bankruptcy, enters into an arrangement or composition with its creditors or signs an authority under Part X of the Bankruptcy Act; or
- (d) if the Purchaser is a corporation and suffers the appointment of controller, administrator, receiver or liquidator, has winding up proceedings initiated against it or ceases or threatens to cease carrying on business.

13.3 If the Purchaser is in default under clause 13.1, Monash may –

- (a) charge interest on all amounts the Purchaser owes to Monash at the rate of 1% per month calculated daily for each day following the due date for payment until payment is made in full;
- (b) be reimbursed for and recover from the Purchaser, all costs and expenses incurred by Monash in seeking to collect debts, including without limitation, the costs of any collection agents and legal costs (on a solicitor and client basis);
- (c) demand immediate payment for all goods and/or services supplied by Monash, notwithstanding that the payment of those goods and/or services would not otherwise have been then due and payable;
- (d) terminate or suspend delivery of any order for goods and/or services; and/or

(e) terminate any agreement and cease supplying the Purchaser with goods and/or services.

13.4 Monash is not obliged to notify the Purchaser before exercising a right under clause 13.3 and these rights will be in addition to any other rights that Monash may have.

14. Force majeure

If a Party is prevented from or delayed in complying with an obligation (other than to pay money) under these Conditions by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

15. Intellectual Property

15.1 Monash makes no representations or warranties in relation to its rights or otherwise to deal with any Intellectual Property subsisting in the goods and/or services.

15.2 Any Intellectual Property subsisting in the goods or created or arising from the provision of services shall vest in Monash.

16. Miscellaneous

16.1 If a provision in these Conditions is unenforceable, illegal or void then it is severed and the remaining terms and conditions continue to operate.

16.2 The Purchaser must not assign or otherwise deal with these Conditions without the consent of Monash, which may be given or withheld at Monash's absolute discretion.

16.3 These Conditions must be read and construed in accordance with the laws of the State of Victoria and the Parties submit to the jurisdiction of the courts and tribunals of that State and of the Commonwealth.

16.4 All of the rights and obligations of each Party under these Conditions which by their nature or context must survive termination and/or expiry, will survive the termination and/or expiry of these Conditions.