

PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

1. DEFINITIONS

In these terms and conditions, unless the context otherwise requires, the following terms have the following meanings:

- 1.1 **Business Day** means any day other than a Saturday, Sunday or public holidays under the *Public Holidays Act 1993* (Vic);
- 1.2 **Contract** means an agreement between the University and the Supplier which is comprised of these terms and conditions and a Purchase Order;
- 1.3 **Confidential Information** means any knowledge, information or know-how pertaining to or concerning the University, including:
 - a) any intellectual property and related documentation;
 - b) any information or documents relating to the University's business systems, customers, properties, assets and affairs; and
 - c) any information the University designates as being confidential, which disclosed to the Supplier or which comes to the Supplier's knowledge or into its possession under or in connection with this Contract (irrespective of whether that knowledge, information or know-how is disclosed before or after the date of this Contract), but does not include information which:
 - d) is in the public domain at the time of disclosure;
 - e) is published or otherwise becomes part of the public domain through no fault of the disclosing party; or
 - f) is required to be disclosed by law.
- 1.4 **Delivery Date** means the date by which the Goods and/or Services must be supplied to the University, as specified in the Purchase Order;
- 1.5 **Goods** means the goods, materials, substances, plant, equipment, chemicals, Hazardous Substances and other like items being purchased by the University as specified in the Purchase Order;
- 1.6 **GST** means a goods and services tax imposed on the supply of goods and services under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.7 **Hazardous Substances** has the meaning given to that term under the *Occupational Health and Safety Regulations 2007* (Vic);
- 1.8 **Intellectual Property Rights** means all intellectual property rights, including, without limitation:
 - a) patents, copyright, rights in circuit layouts, plant breeder's rights, registered designs, trademarks and the right to have Confidential Information kept confidential; and
 - b) any application or right to apply for registration of any of those rights;
- 1.9 **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- 1.10 **Moral Rights Waiver** means written consent of any individual to any act or omission of the University that might otherwise infringe their Moral Rights;
- 1.11 **Non-Conforming Goods and/or Services** means Goods and/or Services which do not comply with the quality or standard required under this Contract (including without limitation the warranties set out under clause 12 of this Contract);
- 1.12 **Personal Information** means personal information as defined in the *Privacy and Data Protection Act 2014* (Vic) and health information as defined in the *Health Records Act 2001* (Vic);
- 1.13 **Purchase Order** means a purchase order issued by the University to the Supplier for the purchase of Goods and/or Services;

- 1.14 **Services** means all services to be provided by the Supplier as specified in the Purchase Order or provided as ancillary to the provision of Goods;
 - 1.15 **Supplementary Terms for Hazardous Substances** means the additional terms and conditions that apply to the supply of Hazardous Substances as in force as at the date the Purchase Order was issued available at [http://www.monash.edu/vpfinance/supplier-info/ohs.](http://www.monash.edu/vpfinance/supplier-info/ohs;);
 - 1.16 **Supplier** means the supplier specified in the Purchase Order;
 - 1.17 **Third Party Terms** means any contractual terms submitted or proposed by the Supplier in relation to the supply of Goods and/or Services, including (but not limited to) any Supplier terms and conditions, discussions, negotiations, understandings, undertakings and/or agreements between the parties whether oral or in writing, other than as expressly set out in this Contract; and
 - 1.18 **University** means Monash University ABN 12 377 614 012.
- ### 2. OFFER AND ACCEPTANCE
- 2.1 A Contract will be formed between the University and the Supplier on the earlier of when the Supplier:
 - a) notifies the University that they accept the Purchase Order; or
 - b) commences supplying the Goods and/or Services specified in the Purchase Order.
- ### 3. GENERAL
- 3.1 In the event of any inconsistency between:
 - a) these terms and conditions and the Purchase Order, these terms and conditions will prevail; and
 - b) this Contract and any Third Party Terms, this Contract will prevail.
 - 3.2 The Supplier must comply with any reasonable instructions, guidelines, policies or codes of conduct as notified by the University in writing from time to time.
 - 3.3 The University is committed to the safety and protection of all children involved in the University's activities. Without limiting clause 3.2, the Supplier must comply with the Child Safe Standards Framework and the Code of Conduct available at https://www.monash.edu/data/assets/pdf_file/0009/948843/Code-of-Conduct-14.06.22.pdf
 - 3.4 In connection with the supply of Services:
 - a) subject to clause 3.4b) and clause 3.6, the Supplier may delegate the performance of the Services to any of its employees or subcontract the performance of the Services to another service provider;
 - b) the University may require, if specified in the Purchase Order, that the Services be performed by a particular employee of the Supplier, with the agreement of the Supplier;
 - c) the parties acknowledge that the Supplier acts as an independent contractor and not as an employee, partner or agent of the University and the Supplier has no authority to act for or to bind the University in any manner whatsoever other than as expressly provided for in this Contract; and
 - d) as an independent contractor, the Supplier will be solely responsible for payments of salary and leave entitlements and any other obligations which an employer has in respect of its employees, including superannuation and WorkCover insurance and the payment of taxes imposed on employers in respect of employees.

- 3.5 For the avoidance of doubt, nothing in clause 3.4d) of this Contract is intended to (or should be read as to) exclude, restrict or modify any obligations that the University may have to make statutory superannuation payments to the Supplier in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGAA**). To the extent required by the SGAA or any other applicable laws, the University will make any required superannuation payments into the Supplier's choice superannuation fund.
- 3.6 The Supplier must not subcontract the whole or any part of the supply of Goods and/or Services without the prior written consent of the University, which must not be unreasonably withheld. Approval to subcontract will not relieve the Supplier of any liability or obligations under this Contract.
- 3.7 Each provision of this Contract is severable. If any provision is or becomes invalid or unenforceable or contravenes any applicable law or regulation, the remaining provisions will not be affected.
- 3.8 Subject to clause 6, no variation, waiver, addition or modification of any terms of a Purchase Order or this Contract will be binding upon the parties unless agreed in writing and signed by the parties.
- 4. PROVISION OF GOODS AND/OR SERVICES**
- 4.1 The Supplier will supply to the University the Goods and/or Services specified in the Purchase Order:
- a) in the case of Services, in a good and workmanlike manner using the standards of relevant skill, care and diligence as expected from a qualified and competent supplier of such services;
 - b) in accordance with any timeframes specified in the Purchase Order, but no later than the Delivery Date stated in the Purchase Order; and
 - c) in accordance with any service levels or standards specified in the Purchase Order.
- 5. PRICE, INVOICING AND GST**
- 5.1 The price specified in the Purchase Order:
- a) is exclusive of GST and any other taxes or duties imposed on or in relation to the Goods and/or Services, unless stated otherwise; and
 - b) includes all delivery, packaging costs and any applicable bank charges.
- 5.2 The Supplier will generate all tax invoices through a supplier purchasing portal approved by the University or via link in the Purchase Order emailed to the Supplier.
- 5.3 Subject to the Supplier having complied with this Contract, within 30 days after the end of the calendar month in which the University receives a correctly rendered tax invoice from the Supplier, the University will pay to the Supplier:
- a) the price for the supply of Goods and/or Services as specified in the Purchase Order; and
 - b) an amount equal to the GST liability (if any) payable by the Supplier.
- 5.4 The Supplier's tax invoice must:
- a) be generated in accordance with clause 5.2;
 - b) clearly state the Purchase Order number;
 - c) clearly state the cost of the Goods and/or Services supplied and the amount of GST (if any) in accordance with the amounts specified in the Purchase Order; and
 - d) contain clear instructions about how payment can be made.
- 5.5 Where the Supplier's tax invoice does not comply with clause 5, the tax invoice must be reissued and the University will have no liability to pay the Supplier until 30 days after the end of the calendar month in which

the University receives a correctly rendered tax invoice.

6. VARIATIONS TO THE PURCHASE ORDER

- 6.1 Where the Purchase Order relates to Services, the University may vary the Services, and make any consequential amendments to the Purchase Order (including the price and Delivery Date) by providing reasonable prior written notice to the Supplier. If the Supplier does not agree to the variation, the Supplier may terminate this Contract and the University will pay the Supplier for Services already performed and any reasonable costs which the Supplier has unavoidably incurred in order to supply the Services.

7. DELIVERY, PACKING AND PACKAGING OF GOODS

- 7.1 The Supplier must package, deliver and unload the Goods in accordance with this Contract and the University's reasonable instructions including, but not limited to, delivering Goods on the Delivery Date to the delivery location stated in the Purchase Order.
- 7.2 The Supplier will use suitable packaging and delivery methods (having regard to the nature of the Goods) to ensure the Goods are delivered in good condition and without damage.
- 7.3 The Supplier must provide a delivery advice with each delivery. All delivery advices must state the Purchase Order number. Where a delivery consists of more than one package each package shall be numbered consecutively and copies of delivery advices must be attached to the last package.

8. TITLE, RISK AND INSURANCE

- 8.1 Where the Purchase Order relates to Goods:
- a) risk in the Goods shall remain with the Supplier until such time as the University accepts delivery of the Goods in accordance with clause 9; and
 - b) title in the Goods shall pass to the University on the first to occur of (1) acceptance of the delivery of the Goods in accordance with this Contract; and (2) payment by the University of the relevant Purchase Order.
- 8.2 The Supplier must effect and maintain insurance policies that a prudent person supplying and delivering the Goods and/or Services would obtain and maintain, including, without limitation, public liability insurance for not less than \$5 million per claim, workers compensation in the amount required by law and, in the case of Services (where applicable), professional indemnity insurance for not less than \$5 million per claim and in the case of Goods, insurance policies for goods in transit and (where applicable) product liability insurance. On request, the Supplier must provide evidence of currency of its insurances to the University.

9. INSPECTION TESTING

- 9.1 The University may inspect, test and accept the Goods and/or Services either before dispatch, at the point of delivery or within a reasonable period after delivery. Such inspection and testing will be conducted at a time and place reasonably required by the University. The University will accept the Goods and/or Services if they are in accordance with this Contract.
- 9.2 The University will notify the Supplier in writing whether it accepts the Goods and/or Services or does not accept the Goods and/or Services in whole or in part due to them being Non-Conforming Goods and/or Services.
- 9.3 If the University notifies the Supplier that the Goods and/or Services are Non-Conforming Goods and/or Services in accordance with clause 9.2, then without any prejudice to any rights the University may have under this Contract, the University may, at its discretion (acting reasonably):
- a) require that the Non-Conforming Goods and/or Services be replaced or re-performed; or

- b) reject the Non-Conforming Goods and/or Services, in which case the University will not be liable to pay for rejected Goods and/or Services or to re-order the Goods and/or Services (and if the University has at the time of rejection, already paid for the Goods and/or Services or part of the Goods and/or Services, the University shall be entitled to a refund of the Price so paid).
- 9.4 Once the Non-Conforming Goods and/or Services have been replaced or rejected, the Supplier must collect the Non-Conforming Goods and/or Services as soon as reasonably practicable and in any event within no more than thirty (30) days. On collection, risk and title in the Non-Conforming Goods and/or Services passes to the Supplier.

10. HAZARDOUS SUBSTANCES

Where the Supplier knows, or ought to know, that it is supplying Hazardous Substances to the University, it must comply with the Supplementary Terms for Hazardous Substances which apply in addition to this Contract.

11. CONFIDENTIALITY

- 11.1 The Supplier must, and must procure that any third parties will:
- a) keep all Confidential Information confidential;
 - b) use Confidential Information solely for the purpose of supplying the Goods and/or Services;
 - c) disclose Confidential Information only to persons who are aware and agree that the Confidential Information must be kept confidential or have signed any confidentiality agreement required by the University from time to time and have a need to know (and only to the extent that each has a need to know); and
 - d) destroy, or upon request by the University immediately return, all Confidential Information upon termination or expiration of this Contract.
- 11.2 The Supplier must, and must ensure that any third parties will, immediately notify the University of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- 11.3 The Supplier must, and must ensure that any third parties will, provide assistance reasonably requested by the University in relation to any proceedings the University may take against any person for unauthorised use, copying or disclosure of Confidential Information.

12. WARRANTIES

- 12.1 The Supplier warrants the Goods and/or Services will:
- a) be supplied in a good and workmanlike manner and using the standards of relevant skill, care and diligence as expected from a qualified and competent supplier of such goods and/or services;
 - b) accord with the requirements and specifications in the Purchase Order;
 - c) be free from defects in design, materials and workmanship;
 - d) be of acceptable quality;
 - e) be fit and proper for their usual purpose;
 - f) be accompanied by all relevant, accurate and up to date information (e.g. instructions, warranties, product descriptions);
 - g) be free from all encumbrances or adverse interests; and
 - h) comply with all applicable Victorian and Commonwealth laws, legal requirements, regulations, Australian Standards, codes and statutes.

13. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Supplier warrants that it owns or has otherwise obtained an appropriate licence over all Intellectual Property Rights and Moral Rights Waivers necessary to supply the Goods and/or Services and to ensure the University has the full benefit of the Goods and/or Services.
- 13.2 Unless otherwise stated in the Purchase Order, where the University contracts with the Supplier to acquire Goods and/or Services which, by their nature have been prepared and created specifically for the University and are not available to the general public, the University shall own all Intellectual Property Rights created by the Supplier in the course of and for the purpose of fulfilling this Contract.
- 13.3 For the purposes of clause 13.2, the Supplier:
- a) presently assigns to the University all existing and future Intellectual Property Rights in or for the Goods and/or Services created by the Supplier or its personnel in fulfilling the Purchase Order; and
 - b) acknowledges that by virtue of this clause, all such existing rights are vested in the University, and, on their creation, all such future rights will vest in the University.
- 13.4 The Supplier, at its own cost, must do all things reasonably requested by the University to enable the University to secure the rights assigned under this clause 13.

14. TERMINATION

- 14.1 The University may terminate this Contract immediately by written notice to the Supplier, where permitted under Australian law, if:
- a) the Supplier has failed to supply the Goods and/or Services in accordance with the Purchase Order;
 - b) the Supplier commits a breach of this Contract and has failed to remedy the breach within 7 days of receipt of a written notice from the University specifying the breach;
 - c) the Supplier being a company, becomes insolvent pursuant to section 459C of the *Corporations Act 2001* (Cth); or
 - d) the Supplier, being an individual, commits an act of bankruptcy as defined by section 40(1) of the *Bankruptcy Act 1966* (Cth).
- 14.2 The Supplier may terminate this Contract immediately by written notice to the University, where permitted under Australian law, if:
- a) the University commits a breach of this Contract and fails to remedy that breach within 7 days of receipt of a written notice from the Supplier specifying the breach; or
 - b) the University ceases to be able to pay its debts as and when they fall due.
- 14.3 To the extent permitted by law, neither party shall make a claim against the other party in respect of any loss of profits that arise as a result of the termination of this Contract under this clause 14.
- 14.4 Notwithstanding clauses 14.1 and 14.2, the University may terminate this Contract without cause by giving one month's written notice to the Supplier. Where the Supplier receives such notice, it shall stop work as specified in the notice and take all available steps to minimise loss arising from the termination. The University will only be liable for any reasonable costs (excluding, without limitation, loss of profits) unavoidably incurred by the Supplier and directly attributable to the termination.

15. INDEMNITY

- 15.1 To the fullest extent permitted by law, the Supplier indemnifies the University and its personnel against

any liability, claim, action, loss, damage, cost or expense (including legal costs), arising as a result of:

- a) a breach by the Supplier of this Contract; or
- b) any negligent, fraudulent or wilful act or omission in the supply of the Goods and/or Services by the Supplier, its employees, servants or agents, except to the extent that any loss or damage is directly attributable to the University's negligent act or omission, fraud, wilful misconduct or breach of this Contract.

15.2 This indemnity is a continuing obligation of the Supplier and will survive the termination or expiry of this Contract.

16. PRIVACY

16.1 The Supplier must handle Personal Information in accordance with the *Privacy and Data Protection Act 2014* (Vic) and *Health Records Act 2001* (Vic), including the 'Information Privacy Principles' and 'Health Privacy Principles' and any code of practice or guidelines made under these Acts, and must use reasonable endeavours to co-operate with all efforts by the University to comply with these laws, codes and guidelines, including in response to a complaint or a suspected privacy breach.

16.2 To the extent that:

- a) the European Union's General Data Protection Regulation (2016/679) (GDPR) is applicable to the University or the Supplier (or both) in the context of this Contract; and
- b) GDPR provisions impose obligations on the University or the Supplier (or both) which are additional to the obligations in clause 16.1, in respect of personal data as that term is defined in the GDPR,

the Supplier must comply with those GDPR provisions in addition to its obligations under clause 16.1.

17. INTERNATIONAL TRANSACTIONS

17.1 This clause 17 applies where the Supplier is not a resident of Australia and does not conduct an enterprise in Australia.

17.2 In this clause 17, **Transaction Tax** means all applicable taxes (including, but not limited to, VAT or any equivalent tax), levies, duties, charges, deductions and withholdings and similar imposts imposed by law or by any government agency, other than imposts charged on net income. For the avoidance of doubt, Transaction Tax does not include GST.

17.3 In connection with the supply of the Goods and/or Services, the Supplier is solely responsible for any Transaction Tax and other payment incurred in acquitting tax and legal liabilities in its country of residence.

17.4 The price specified on the Purchase Order is inclusive of all Transaction Tax.

17.5 If the University is required by law to make a deduction or withholding from a payment to the Supplier for or on account of applicable Transaction Tax, the University may make that deduction or withholding and pay such taxes to the relevant tax authority in a timely manner. The University will transmit to the Supplier a payment summary outlining tax withheld as soon as reasonably practicable.

17.6 The University will not be liable to pay to the Supplier any amount deducted or withheld in accordance with clause 17.5.

17.7 The Supplier acknowledges that it relies on its own independent investigation, professional and other tax, legal and accounting advice and risk assessment in connection with this Contract and the supply of the Goods and/or Services.

18. TIME IS OF THE ESSENCE

Time shall be of the essence in the performance of the Supplier's obligations under this Contract (unless the

failure to perform any obligations on time is caused by an act or omission of the University).

19. GOVERNING LAW

This Contract and the rights and obligations of the University and the Supplier must be construed in accordance with, and governed by, the laws of the State of Victoria. The parties agree to submit to the non-exclusive jurisdiction of the courts in the State of Victoria.

20. DISPUTE RESOLUTION

20.1 If a dispute arises under this Contract and the parties cannot resolve it by good faith negotiations, the parties must endeavour to settle the dispute by mediation. The mediator will be jointly appointed by the parties, or where the parties cannot agree, nominated by the then President of the Law Institute of Victoria, or if not then in operation, a like organisation to be agreed between the parties, and the parties shall bear their own legal costs.

20.2 In the event the dispute is not resolved by mediation within twenty (20) Business Days after the appointment of the mediator, or such further time as the parties agree in writing, a party may then commence proceedings in relation to the dispute.

20.3 Nothing in this clause 20 shall be taken as preventing a party from commencing a proceeding for urgent interlocutory relief or from terminating this Contract by providing written notice to the other party.

21. NOTICES

21.1 A notice is deemed to have been received by the addressee:

- a) if emailed to the party's contact at the email address specified in the Purchase Order, on the Business Day on which it is sent or if it is sent on a non-Business Day, the next Business Day;
- b) if hand delivered to the party's address specified in the Purchase Order, when delivered; or
- c) if posted to the party's address specified in the Purchase Order, on the third Business Day after posting.

22. MODERN SLAVERY

22.1 In this clause 22:

- a) **Modern Slavery** has the meaning as defined in the Modern Slavery Legislation
- b) **Modern Slavery Legislation** means all applicable modern slavery laws, statutes, regulations and codes from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth).

22.2 The Supplier agrees that:

- a) it will comply with its requirements under the Modern Slavery Legislation, if applicable; and
- b) if, at any time the Supplier becomes aware of any instances or practices of Modern Slavery within its operations or supply chains, the Supplier will notify the University as soon as reasonably practicable and take all reasonable steps to address and remediate the offending practices.

22.3 In the event that the University has at any time, during the term of this Contract, reasonable cause to believe that the Supplier is in breach of the provisions of this clause 22, the University may suspend or terminate this Contract with immediate effect by providing written notice to the Supplier.

22.4 Notwithstanding any other clause in this Contract, the University reserves the right to provide any information disclosed by the Supplier as authorised and/or required by law and/or to any third party which has been engaged by the University to assist with internal compliance in relation to Modern Slavery.