

PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

1. Definition

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

- 1.1 **Delivery Date** means the date by which the Goods and/or Services must be supplied to the University, as specified in the Purchase Order.
- 1.2 **Goods** means the goods, materials, substances, plant, equipment, chemicals, Hazardous Substances and other like items being purchased by the University as specified on the Purchase Order.
- 1.3 **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).
- 1.4 **Hazardous Substances** has the meaning given to that term under the *Occupational Health and Safety Regulations 2007*
- 1.5 **Intellectual Property Rights** means all intellectual property rights, including, without limitation:
 - a) patents, copyright, rights in circuit layouts, plan 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.
- 1.6 **Personal Information** means personal information as defined in
- 1.7 the *Privacy and Data Protection Act 2014* (Vic) and health information as defined in the *Health Records Act 2001* (Vic).
- 1.8 **Purchase Order** means a purchase order issued by the University to the Supplier under these terms and conditions.
- 1.9 **Services** means all services to be provided by the Supplier as specified on the Purchase Order or provided as ancillary to the provision of Goods.
- 1.10 **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>
- 1.11 **Supplier** means the supplier specified on the Purchase Order.
- 1.12 **University** means Monash University ABN 12 377 614 012.

2. General

- 2.1 These terms and conditions apply exclusively to each Purchase Order and cannot be varied or replaced by any other terms except with the written agreement of both parties.
- 2.2 The Supplier must comply with any reasonable instructions, guidelines, policies or codes of conduct notified to the Supplier at the time the Purchase Order is issued.
- 2.3 The University is committed to the safety and protection of all children involved in the University's activities. Without limiting clause 2.2, the Supplier must comply with the Child Safe Standards Framework and the Code of Conduct available at <https://www.monash.edu/about/a-culture-of-integrity-and-respect/behaviour-expectations-at-monash>

- 2.4 In connection with the supply of Services:

- a) subject to paragraph (b) and clause 2.5, the Supplier may delegate the performance of the Services to any of its employees or subcontract 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 these Terms and Conditions;
- 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.

- 2.5 The Supplier shall not subcontract the whole or any part of the Goods and/or Services without the prior written consent of the University, which will not be unreasonably withheld. Approval to subcontract will not relieve the Supplier of any liability or obligations under a Purchase Order and these Terms and Conditions.

- 2.6 Each provision of these terms and conditions is severable. If any provision is or becomes invalid or unenforceable or contravenes any application law or regulation, the remaining provisions will not be affected

- 2.7 No variation, waiver, addition or modification of any of a Purchase Order or these terms and conditions will be binding upon the parties unless in writing and signed by the parties.

3. Provision of Goods and/or Services

- 3.1 The Supplier will supply to the University the Goods and/or Services specified on 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 on the Purchase Order, but no later than the Delivery Date stated on the Purchase Order; and
 - c) in accordance with any service levels or standards specified on the Purchase Order.

4. Price, Invoicing and GST

- 4.1 The price specified on 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 and packaging costs.
- 4.2 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.
- 4.3 Subject to the Supplier having complied with the Purchase Order and these terms and conditions, 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 on the Purchase Order; and
 - b) an amount equal to the GST liability (if any) payable by the Supplier.

- 4.4 The Supplier's tax invoice must:
- be sent to the University at the address specified on the Purchase Order;
 - clearly state the Purchase Order number;
 - clearly state the cost of the Goods and/or Services supplied and the amount of GST (if any) in accordance with the amounts specified on the Purchase Order; and
 - contain clear instructions about how payment can be made.

4.5 Where the Supplier's tax invoice does not comply with this clause 4, 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.

5. Variations

5.1 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 reasonable prior written notice to the Supplier. If the Supplier does not agree to the variation, the Supplier may cancel the Purchase Order 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.

6. Delivery, Packing and Packaging of Goods

6.1 Where the Purchase Order relates to Goods, the price specified on the Purchase Order includes packaging and delivery. The Supplier must package, deliver and unload the Goods in accordance with the Purchase Order and the University's reasonable instructions including, but not limited to, delivering Goods on the Delivery Date to the delivery location stated on the Purchase Order.

6.2 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.

6.3 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.

7. Title, Risk and Insurance

7.1 Where the Purchase Order relates to Goods:

- risk in the Goods shall remain with the Supplier until such time the University takes delivery of the Goods; and
- title in the Goods shall pass to the University on the first to occur of (1) delivery of the Goods in accordance with the Purchase Order and these terms and conditions; and (2) payment by the University of the relevant Purchase Order.

7.2 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.

8. Inspection testing

The University may inspect, test and approve 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 approve the Goods and/or Services if they are in accordance with the Purchase Order and these terms and conditions.

9. 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 these terms and conditions.

10. Warranties

10.1 The Supplier warrants the Goods and/or Services will:

- 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
- accord with the requirements and specifications on the Purchase Order;
- be free from defects in design, materials and workmanship;
- be of acceptable quality;
- be fit and proper for their usual purpose;
- be accompanied by all relevant, accurate and up to date information (e.g. instructions, warranties, product descriptions);
- be free from all encumbrances or adverse interests; and
- comply with all applicable Victorian and Commonwealth laws, legal requirements, regulations, Australian Standards, codes and statutes.

11. Ownership of Intellectual Property Rights

11.1 The Supplier warrants that it owns or has otherwise obtained an appropriate licence over all Intellectual Property Rights necessary to supply the Goods and/or Services and to ensure the University has the full benefit of the Goods and/or Services.

11.2 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 the Purchase Order.

11.3 For the purposes of clause 11.2, the Supplier:

- 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
- 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.

11.4 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 11.

12. Termination

12.1 The University may cancel a Purchase Order immediately by written notice to the Supplier, where permitted under Australian law, if:

- the Supplier has failed to supply the Goods and/or Services in accordance with the Purchase Order;
- the Supplier commits a breach of any of these terms and conditions and has failed to remedy the breach within 7 days of receipt of a written notice from the University specifying the breach;

- a) the Supplier being a company, becomes insolvent pursuant to section 459C of the Corporations Act 2001 (Cth); or
 - b) the Supplier, being an individual, commits an act of bankruptcy as defined by section 40(1) of the Bankruptcy Act 1966 (Cth).
- 12.2 The Supplier may cancel a Purchase Order immediately by written notice to the University, where permitted under Australian law, if:
- a) the University commits a breach of these terms and conditions 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.
- 12.3 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 cancellation of a Purchase Order under this clause 12.
- 12.4 Notwithstanding clauses 12.1 and 12.2, the University may cancel a Purchase Order 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 cancellation. 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 cancellation.
- 13. Inspection testing**
- 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 these terms and conditions; or
 - b) any negligent, fraudulent or wilful act or omission in the performance 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 these terms and conditions. This indemnity is a continuing obligation of the Supplier and will survive the cancellation of a Purchase Order and termination or expiry of these terms and conditions.
- 14. Privacy**
- 14.1 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.
- 14.2 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 Purchase Order; and GDPR provisions impose obligations on the University or the Supplier (or both) which are additional to the obligations in clause 14.1, 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 14.1.

15. International Transactions

- 15.1 This clause 15 applies where the Supplier is not a resident of Australia and does not conduct an enterprise in Australia.
- 15.2 In this clause 15, Transaction Tax means all applicable taxes (including GST or equivalent, such as VAT), levies, duties, charges, deductions and withholdings and similar imposts imposed by law or by any government agency, other than imposts charged on net income.
- 15.3 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.
- 15.4 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 these Terms and Conditions and the supply of the Goods and/or Services.

16. Time is of the essence

Time shall be of the essence in the performance of the Supplier's obligations under the Purchase Order and these terms and conditions (unless the failure to perform any obligations on time is caused by an act or omission of the University).

17. Governing law

These terms and conditions 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 jurisdiction of the courts in the State of Victoria.

18. Dispute Resolution

The parties agree to cooperate and act in good faith to resolve any disputes arising from the Purchase Order or these terms and conditions before any dispute is submitted to a Court in the State of Victoria..

19. Notices

All written notices made under these terms and conditions may be served personally, via email, or sent by express post to the address of the Contact Person noted on the Purchase Order, at the Delivery Address noted on the Purchase Order