

1. GENERAL

- 1.1 The agreement commences on the date specified in the Purchase Order and ends on the date in the Purchase Order or, if no date is specified, the date that all Supplies have been delivered to the University in accordance with this agreement.
- 1.2 The agreement comprises:
- the Purchase Order;
 - these Terms and Conditions; and
 - any document incorporated by reference.
- In the event of any inconsistency between these documents, the higher ranked document will prevail.

2. PROVISION OF SUPPLIES

- 2.1 Supplies must be provided at the time, place and in the manner specified in the Purchase Order or as otherwise directed by the University.
- 2.2 **Standard of Goods.** All Goods must:
- be new (unless the agreement provides otherwise);
 - meet the specifications and descriptions set out in the Purchase Order and be fit for the purpose for which they are required by the University;
 - be free from defects in materials and workmanship and of at least merchantable quality;
 - comply with all representations made by or on behalf of the Supplier to the University in relation to standards, quality and timing (including representations made before this contract was entered into);
 - be free from all Encumbrances;
 - be packed to ensure their safe delivery and, where applicable, in environmentally friendly packaging and in accordance with any specific packing, marking or labelling required by the University.
- 2.3 **Standard of Services.** The Supplier must deliver the Services to the standard that would be expected of an experienced and professional supplier of similar service and must comply with all applicable Australian standards, industry standards and guidelines and any University policies, standards or guidelines specified in the Purchase Order.
- 2.4 **Acceptance.** The University may, following the provision of the Supplies, conduct any acceptance tests it considers appropriate for the purpose of satisfying itself that the Supplies have been provided in accordance with this agreement. The University may reject any Supplies that do not pass the University's acceptance tests, and the Supplier must promptly replace or repair the Supplies without further charge to the University.
- 2.5 **Specified Personnel.** If any specified personnel are listed in the Purchase Order, these personnel must perform work in relation to the Supplies in accordance with this agreement. If for any reason the specified personnel listed in the Purchase Order are unable or unwilling to perform work in relation to the Supplies in accordance with this agreement, the Supplier will immediately inform the University and provide replacement personnel acceptable to the University at no additional cost at the earliest opportunity.

3. TITLE AND RISK

- 3.1 Property in the Goods passes upon delivery to the University, and risk of loss or damage to the Goods pass to the University upon delivery to the University.

4. INVOICE AND PAYMENT

- 4.1 The University will pay the Supplier within 30 days of receipt of a correctly rendered invoice.
- 4.2 A correctly rendered invoice means an invoice that:
- relates only to Supplies that have been delivered and accepted by the University in accordance with this agreement;
 - is calculated in accordance with all required supporting documentation;
 - is issued in accordance with the timing of invoices specified in the Purchase Order or upon delivery of the goods;
 - identifies the Purchase Order number (if any) and is addressed in accordance with the Purchase

Order; and

- is, if GST is applicable, a valid tax invoice in accordance with GST legislation.

5. INCLUSIVE PRICE

- 5.1 The price specified on the Purchase Order includes:
- all taxes, duties and other imposts for which the Supplier is liable; and
 - all charges for the Supplies, including any amounts payable for packaging and delivery, insurance, testing or the use of Intellectual Property Rights.
- 5.2 No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

6. INSURANCE

- 6.1 The Supplier must have and maintain insurance cover:
- on such terms and conditions as a prudent supplier providing similar Supplies would have and maintain; and
 - without limiting the general requirement above, to the extent specifically required in the Purchase Order.
- 6.2 If requested the Supplier must provide evidence of currency of insurance required under this clause 6 to the University.

7. INDEMNITY

- 7.1 The Supplier indemnifies the University, its officers and employees against all loss, damage, expense or legal costs (on a solicitor/own client basis) arising in respect of:
- any negligent, wilful or unlawful act or omission by the Supplier in connection with this agreement;
 - any breach of the Supplier's obligations under this agreement; or
 - any action or claim for alleged infringement of any Intellectual Property Rights in connection with this agreement.
- 7.2 The Supplier's liability to the University under clause 7.1a is reduced to the extent that any wilful default or unlawful, negligent act or omission of the University, its officers or employees contributed to the loss, damage, expense or cost.

8. VARIATIONS

- 8.1 A variation to this agreement is binding only if in writing and signed by the Supplier and the University.

9. SECURITY AND SAFETY

- 9.1 The Supplier must, when using the University's premises or facilities, comply with all reasonable directions of the University relating to work health, safety and security, as notified by the University or as might reasonably be inferred from the circumstances.

10. NEGATION OF EMPLOYMENT

- 10.1 The agreement does not create a relationship of employment, agency or partnership between the Supplier and the University. The Supplier must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer or employee of the University.

11. CONFLICT OF INTEREST

- 11.1 The Supplier:
- warrants that, to the best of its knowledge after making diligent inquiry, no conflict of interest exists or is likely to arise in the supply of the Supplies; and
 - if a conflict of interest arises, it will notify the University immediately and take all steps required by the University in relation to the conflict of interest.

12. PRIVACY REQUIREMENT

- 12.1 In relation to personal information obtained during the

course of providing the Supplies, the Supplier must:

- a) use or disclose the personal information only for the purposes of the agreement;
- b) not do any act or engage in any practice that would breach an Information Privacy Principle under the *Information Act* (NT);
- c) immediately notify the University if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause 12.

13. CONFIDENTIAL INFORMATION

13.1 The Supplier shall not, and shall ensure that its officers, employees, agents and subcontractors do not, make public or disclose any of the University's Confidential Information without the prior written approval of the University.

14. MEDIA COMMENTARY

14.1 The Supplier must not, and must ensure its personnel and subcontractors do not:

- a) make any statement to the media or issue any publicity in any form concerning the University or the Supplies;
- b) use the University as a reference; or
- c) mention the University (either directly or in terms such as might reasonably lead a person to conclude that the University was being referred to) or use the University's name in any customer list or promotion, without the written consent of the University.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 This agreement does not assign the Intellectual Property Rights of either party existing at the date of the agreement.

15.2 Intellectual Property Rights in Material brought into existence as part of, or for the purposes of, performing the Services vests in the University. The Supplier grants, or must obtain for, the University a perpetual, worldwide, royalty free licence (including a right to sublicense) to use, reproduce, adapt, modify and communicate any other material provided to the University under the agreement.

16. MORAL RIGHTS

16.1 To the extent permitted by law and for the benefit of the University, the Supplier consents, and must procure from each author of Material consents in writing, to the use, reproduction, adaptation and exploitation (with or without attribution) by the University of Material even if the use may otherwise be an infringement of their Moral Rights.

17. NOTICES

17.1 Any notice must be in writing, from one party's contact and delivered to the other party's contact, at the postal address or email address set out in the Purchase Order (or as otherwise notified in writing).

18. ASSIGNMENT AND SUB-CONTRACTING

18.1 The Supplier must not, without prior consent in writing from the University:

- a) assign the Supplier's rights under the agreement; or
- b) sub-contract the whole or any part of the manufacture or supply of the Goods or performance of the Services.

18.2 The Supplier must ensure that any sub-contractor complies with all relevant requirements of this agreement. The Supplier acknowledges that it is liable to the University for the acts and omissions of any sub-contractors as if those were the acts or omissions of the Supplier.

19. TERMINATION FOR DEFAULT

19.1 The University may by written notice and in addition to any other rights or remedies it has under the agreement or otherwise terminate the agreement in whole or in part if the Supplier:

- a) fails to deliver all of the Supplies by the delivery date specified in the Purchase Order;

- b) breaches a provision of the agreement where that breach is not capable of remedy;
- c) breaches any other provision of the agreement and fails to remedy the breach within 10 business days after receiving notice from the University requiring it to do so;
- d) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors or a creditor's petition is filed seeking a sequestration order against his or her estate; or
- e) being a corporation, comes under one of the forms of external administration referred to in the Corporations Act 2001 (Cth), or has an order, or an application is filed seeking an order to be, made against it for the purpose of placing it under external administration (subject to the statutory stay provisions of the *Corporations Act 2001* (Cth)).

19.2 On termination the University may:

- a) cease all payments under the agreement; and
- b) recover from the Supplier all sums paid for unperformed Services, undelivered Goods, or Supplies which are otherwise not in accordance with the agreement.

20. TERMINATION OR REDUCTION FOR CONVENIENCE

20.1 In addition to any other rights it has under the agreement, the University may, at any time, by written notice to the Supplier, terminate the agreement or reduce the scope or quantity of the Supplies.

20.2 If the agreement is terminated under clause 20.1, the University is liable only for:

- a) payments under clause 4 for delivered Supplies provided in accordance with the agreement before the effective date of termination subject to the University's right to reject Supplies under clause 2.4; and
- b) reasonable costs actually incurred by the Supplier and directly attributable to the termination, and the Supplier is not entitled to compensation for loss of prospective profits.

20.3 The University is not liable to pay compensation under clause 20.2 for an amount which would, in addition to any amounts paid or due, or becoming due, to the Supplier under the agreement, exceed the total amount payable for the Supplies under the agreement.

20.4 Where the agreement is reduced in scope under clause 20.1, the price specified in the Purchase Order, and the University's liability to make payments under the agreement, are reduced in accordance with the reduction in scope.

21. SURVIVAL

21.1 Clauses 6.2, 7, 12, 13, 14 and 15 survive termination or expiry of the agreement.

22. LAWS

22.1 The Supplier must ensure, in carrying out the agreement that it complies with all relevant laws including, without limitation, all relevant legislation and codes of practice relating to work health and safety.

22.2 The agreement is governed by the law of the Northern Territory.

23. MODERN SLAVERY

23.1 The Supplier warrants and agrees that:

- a) it must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Supplies;
- b) if at any time it becomes aware of Modern Slavery practices in the operations and supply chains, it must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- c) upon request from the University, it must, as soon as practicable, provide the University with all information it needs to inform the modern slavery statement that the University needs to provide pursuant to the Modern Slavery Act.

24. DISPUTES

24.1 For any dispute arising under this agreement:

- a) the parties will try to settle the dispute via direct negotiation at an operational level;
- b) if unresolved within 10 business days, the parties will each nominate a senior representative with no prior involvement in the dispute. The senior representatives will try to settle the dispute by direct negotiation;
- c) if unresolved within a further 10 business days, either party may commence legal proceedings.

25. ENTIRE AGREEMENT

25.1 The agreement represents the entire agreement between the parties in relation to the subject matter and, subject to clause 2.2d, supersedes all communications, negotiations, and arrangements (either oral or written) between the parties.

26. DEFINITIONS

26.1 In these Terms and Conditions:

'Confidential Information' means information that is by its nature confidential, is designated by a party as confidential (including in the Purchase Order); or the other party knows or ought to know is confidential.

'Encumbrance' means a security interest as defined in section 12 of the Personal Property Securities Act 2009 (Cth);

'Goods' means the goods described in the Purchase Order;

'Intellectual Property Rights' means all intellectual property rights, including copyright, patents, trademarks, designs, trade secrets, inventions, know-how, copyright, rights in circuit layouts and confidential information, any application for any of the foregoing rights and any rights of a similar nature;

'Material' means any material brought into existence as part of, or for the purpose of providing the Goods or performing the Services and includes but is not limited to documents, equipment, information or data stored by any means;

'Moral Rights' means the right of attribution of authorship of work, the right not to have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth);

'Purchase Order' means the document of that title issued by the University to the Supplier; Order; and

'Supplies' means the Goods and/or the Services.

'Modern Slavery Act' means the Modern Slavery Act 2018 (Cth) ("the Act")

'Modern Slavery' has the meaning given in section 4 of the Act.

'Services' means the services specified in the Purchase Order;

and

'Supplies' means the Goods and/or the Services.

This is the end of the Terms and Conditions.

