

The University of Newcastle Purchase Order Terms and Conditions



1. Definitions

Background Intellectual Property means the Intellectual Property of either the University or the Supplier which existed prior to the issue of the Purchase Order.

Campus means any University of Newcastle campus from time to time.

Confidential Information means all information which is disclosed to a party (whether before or after the date of an Agreement) by or on behalf of the other party, or which a party otherwise acquired from the other party, which relates directly or indirectly to the supply of goods and/or services, and which:

- (a) is by its nature confidential;
- (b) is designated by a party as being confidential; or
- (c) a party knows or ought to know is confidential.

Force Majeure Event means an event which:

- (a) is outside the control of the party claiming that the event has occurred;
- (b) the adverse effects of which could not have been prevented or mitigated against by that party with reasonable diligence or reasonable cautionary measures; and
- (c) could not have reasonably been anticipated by that party prior to entering into this Agreement,

and which may include natural disasters, a pandemic or epidemic (as defined by the World Health Organisation), acts of terrorism, riots, revolution and civil commotion, but does not include any act or omission of Personnel (except to the extent that act or omission is caused by a Force Majeure Event).

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means any of the following:

- (a) if a party comes under a form of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in any law, or has an order made against it for the purpose of placing the party under external administration;
- (b) if a party is unable to pay all its debts as and when they become payable or the party fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated to obtain an order for winding a party up, or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for winding the party up;
- (d) if a party is a local government organisation, the relevant government takes action to cease the party's operations, or to amalgamate them with the

operations of another local government organisation;

- (e) a party becomes bankrupt or enters into a scheme of arrangement with creditors;
- (f) a receiver, liquidator or administrator is appointed for a party;
- (g) an application is made, or proceedings are commenced, with a view to obtaining cancellation of any registration of a party or appointment of an inspector or other officer to investigate any of the party's affairs pursuant to any law; or
- (h) anything analogous to, or of a similar effect to, anything described above occurs in respect of a party.

Intellectual Property means all present and future rights to intellectual property including any inventions and improvements, trademarks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, or formula.

Loss means claims, actions, expenses, losses, liabilities, damages and costs (including legal costs) and indirect losses and damages including those arising from third party claims.

Modern Slavery Law means the *Modern Slavery Act 2018* (NSW), *Modern Slavery Act 2018* (Cth), *Commonwealth Criminal Code 1995* (Cth) and similar laws in all relevant jurisdictions.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personal Interest means an interest that may arise from an individual's private or non-work life that can bring financial or other material benefits. Personal interests may include interests of an individual's close connections, including family connections and/or the interests of an associate, regardless of whether those interests are domestic or foreign.

Personnel means:

- (a) in relation to the University, the University's employees, agents and contractors (other than the Supplier); and
- (b) in relation to the Supplier, the Supplier's employees, agents, subcontractors and subcontractor's employees.

Privacy Laws means:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW) and any ancillary rules, guidelines, orders, directions, directives or other instrument made or issued under them with which the either party is bound to comply;
- (b) the *Privacy Act 1988* (Cth);

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- (c) the *Health Records and Information Privacy Act 2002* (NSW); and
- (d) all other applicable laws, regulations or contractual terms which apply to the Supplier in respect of Personal Information.

Purchase Order means the commercial document issued by the University to the Supplier, indicating types, quantities, and agreed prices for the supply of goods and/or services.

Supplier means the entity stated on the Purchase Order that is supplying goods and/or services to the University.

University Policies means the laws, rules and policies with respect to:

- (a) work, health and safety;
- (b) use of the University's facilities;
- (c) use of ICT resources;
- (d) security, including cyber security;
- (e) codes of conduct; and
- (f) privacy and information management,

as amended from time to time, copies of which are downloadable from the University's website (www.newcastle.edu.au/policy/).

2. Interpretation

- (a) Headings and bold type are for convenience only and do not affect the interpretation of an Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) The word 'includes' in any form is not a word of limitation.
- (d) A reference to A\$, \$A, dollar or \$ is to Australian currency.
- (e) Other parts of speech and grammatical forms of a word or phrase defined in an Agreement have a corresponding meaning.
- (f) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (g) A reference to a clause, party, schedule or annexure is a reference to a clause, party, schedule or annexure of, or to, this Agreement.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) No provision of an Agreement will be construed adversely to the University because the University

was responsible for the preparation of the Agreement or that provision.

- (m) A reference to a body, other than a party to this Agreement, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

3. Application

- 3.1 These terms and conditions apply to the supply of goods and/or services as set out in Purchase Orders issued by the University of Newcastle (**University**).
- 3.2 These terms and conditions are additional to any terms and conditions set out in the Purchase Order and any terms and conditions expressly attached or incorporated into the Purchase Order in writing.

4. Formation of Agreement

- 4.1 By issuing a Purchase Order, the University is making an offer to the Supplier.
- 4.2 The Supplier accepts the University's offer, and the Agreement is formed, by the Supplier either:
 - (a) acknowledging the Purchase Order in writing; or
 - (b) delivering the goods or commencing the services described in the Purchase Order to the University,whichever occurs first.
- 4.3 These terms and conditions, together with the Purchase Order, form the terms of the Agreement between the University and the Supplier.
- 4.4 The Supplier acknowledges and agrees that to the extent of any inconsistency between this Agreement and any prior agreement, the terms of this Agreement prevail.

5. Delivery or installation

- 5.1 The delivery and/or installation time will be set out in the Purchase Order.
- 5.2 Time is of the essence with respect to the Supplier's delivery and/or installation obligations.
- 5.3 The University may cancel the Purchase Order without penalty if the goods and/or services are not delivered by the specified time.

6. Title

- 6.1 The title in the goods will pass to the University at the time of payment.
- 6.2 The risk in the goods will pass to the University upon delivery of the goods to the University.

7. Payment

- 7.1 In consideration for the supply of the goods and/or services under this Agreement, the University will pay the Supplier the amount set out in the Purchase Order (**Fees**).

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7.2 Subject to clause 19.3, the University will pay no more than the Fee set out in a Purchase Order, and the Supplier has no right to claim a variation to the Fee for any reason, including:

- (a) the Fee being based on an estimate or quote;
- (b) changes in international exchange rates effecting the cost of supply;
- (c) changes in costs of Personnel or goods; or
- (d) correcting errors made by Supplier Personnel.

7.3 All prices stated in the Purchase Order for any taxable supply must include any Goods and Services Tax (**GST**) payable.

7.4 The University is not obliged to pay for any taxable supply made by the Supplier unless the University receives a correctly rendered GST tax invoice.

7.5 Unless otherwise set out in the Purchase Order, the University agrees to pay the Supplier the Fees within 30 days of receipt and acceptance of a correctly rendered invoice from the Supplier.

7.6 Payment is not evidence of the value of work done, goods and/or services delivered, that work or goods and/or services are satisfactory, or an admission of liability, but is payment on account only.

7.7 The University may set-off any outstanding debt, retention money or other outstanding amount owed by the Supplier before paying the Fees.

8. Subcontracting

8.1 Unless agreed in writing by the University, or as set out in the Purchase Order, the Supplier must not subcontract any of its obligations under this Agreement.

8.2 The Supplier is liable for carrying out and completing its obligations under this Agreement irrespective of whether it has subcontracted some or all of its obligations.

9. Health and safety

9.1 In relation to any supply of goods and/or services under this Agreement, the Supplier will:

- (a) ensure the goods and/or services supplied are safe and suitably protect persons and property;
- (b) comply with any reasonable direction of the University regarding health and safety;
- (c) be responsible for ensuring that it can comply with all safety rules and regulations which arise under either health and safety legislation or University Policies; and
- (d) immediately notify the University in writing if any accident, safety incident or near miss accident or incident occurs, and fully co-operate with the University in connection with any investigation following an accident, safety incident or near miss accident or incident.

9.2 The Supplier is responsible for ensuring that all persons who perform services on Campus on behalf of the Supplier (including employees, contractors, subcontractors, agents and others):

- (a) complete the University's site induction before performing any services on Campus; and

- (b) have provided evidence of all relevant insurances required under clause 11.2 prior to performing the services.

9.3 Prior to bringing any hazardous substance to the University, the Supplier must ensure that the University has approved the entry and use of the hazardous substance.

9.4 When on University property or entering University premises, the Supplier must, and must ensure its Personnel, protect the health and safety of people and property on the property and in the premises.

10. Indemnity

10.1 The Supplier indemnifies, and will keep indemnified, the University and its Personnel against all Loss incurred by the University as a result of, or in connection with:

- (a) the goods and/or services supplied, or to be supplied, under the Purchase Order;
- (b) any infringement of a third party's Intellectual Property or moral rights arising from the supply of the goods and/or services;
- (c) any negligent, unlawful or wilful act or omission of the Supplier or its Personnel; and
- (d) any negligent act or omission of a subcontractor engaged by the Supplier under this Agreement,

except to the extent that any negligent act or omission of the University contributed to the relevant liability.

11. Insurance

11.1 The Supplier must have and maintain public and products liability insurance to the value of twenty million dollars, and, if the Supplier is supplying services, professional indemnity insurance to the value of five million dollars, for each occurrence for the term of this Agreement.

11.2 The Supplier will ensure that any employees, contractors, subcontractors, agents and others engaged by it are insured to at least the same level as the Supplier.

11.3 Upon request, the Supplier must provide the University with evidence of the currency of any insurance it is required to obtain.

12. Warranties

12.1 The Supplier warrants that:

- (a) it possesses all rights, title, licenses, interests and property necessary to supply the goods and/or services under this Agreement;
- (b) the goods and/or services will be of a suitable quality and are fit for the purposes intended;
- (c) the goods will be complete and free from defects;
- (d) the goods are free from any security, charge or encumbrance;
- (e) it has, to the best of its knowledge, all licences and rights to any Intellectual Property in the goods and/or services;
- (f) it possesses and will supply accurate and up-to-date documentation associated with the goods and/or services;

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- (g) the Supplier's Personnel are appropriately experienced with relevant expertise and are competent to perform the services; and
- (h) the Supplier's Personnel will take due care and skill in performing the services.

12.2 The Supplier must comply with all relevant University Policies.

13. Return, repair or replacement of goods

13.1 If goods do not meet the warranted standards set out in this Agreement (**Required Standards**) the University may:

- (a) require the Supplier to replace the goods with equivalent goods that meet the Required Standards;
- (b) require the Supplier to repair the goods so that they meet the Required Standards; or
- (c) return the goods to the Supplier for a full refund.

13.2 Any cost incurred by the University in exercising its rights under this clause 13 will be borne by the Supplier.

14. Intellectual Property

14.1 All rights, title and interest in any Intellectual Property created as a result of, or in connection with, the supply of goods and/or services under this Agreement will vest in and be owned by the University.

14.2 The Supplier agrees to do all things necessary to ensure that the University owns Intellectual Property arising under this Agreement, including:

- (a) executing all documentation; and
- (b) performing all such acts,

required to transfer or assign ownership to the University.

14.3 Any Intellectual Property rights owned by a party prior to this Agreement (**Background Intellectual Property**) will remain with the contributing party and will not be altered or transferred by virtue of its use in the supply of goods and/or services.

14.4 The Supplier grants to the University a permanent, irrevocable, royalty-free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt, or communicate to the public and exploit the Supplier's Background Intellectual Property rights in conjunction with use of the goods and/or services.

15. Confidentiality

15.1 If a party (**Disclosing Party**) provides the other party (**Receiving Party**) with any Confidential Information, then the Receiving Party will:

- (a) use the Confidential Information solely for the purposes of fulfilling their obligations under this Agreement;
- (b) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this Agreement or with the prior written consent of the Disclosing Party;

(c) keep the Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this Agreement;

(d) promptly notify the Disclosing Party if the Receiving Party suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information; and

(e) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Disclosing Party.

15.2 If requested by the Disclosing Party, the Receiving Party will immediately return to the Disclosing Party, or destroy, delete and erase as the Disclosing Party directs, all documents that are or contain Confidential Information or that reproduce, are based on, utilise or relate to Confidential Information.

16. Privacy

If the Supplier is asked or required to collect, possess or transfer Personal Information of University Personnel or students during the course of supplying goods and/or services under this Agreement, the Supplier must ensure it complies with all applicable Privacy Laws.

17. Modern Slavery

17.1 The Supplier warrants that it and its Personnel:

- (a) have the full knowledge of and resources needed to comply with the Modern Slavery Laws;
- (b) have not been convicted of an offence involving slavery or human trafficking;
- (c) will comply with the Modern Slavery Laws; and
- (d) will do everything needed to assist the University to comply with the Modern Slavery Laws, including providing the University with all information it requires to fulfil its reporting obligations under those laws.

17.2 In performing this Agreement, the Supplier must:

- (a) not violate a Modern Slavery Law;
- (b) not place the University in breach or potential breach of a Modern Slavery Law;
- (c) have in place policies and procedures and undertake due diligence to ensure the Supplier's compliance with the Modern Slavery Laws and ensure that its Personnel do likewise; and
- (d) ensure that all relevant subcontracts and supply contracts include terms no less onerous than those included in this clause 17.

17.3 If the Supplier becomes aware of anything that does or could put a party or its Personnel in breach of a Modern Slavery Law, it must immediately:

- (a) notify the University in writing of all relevant facts;
- (b) respond promptly to all questions asked and requests for information made by or on behalf of the University in respect of the Supplier's compliance with its obligations under this clause 17 and the Modern Slavery Laws; and
- (c) provide the University with all assistance required by the University to ensure compliance with

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Modern Slavery Laws and to minimise the effects of the event.

- 17.4 If directed to do so by the University, a senior executive of the Supplier in a position to know all relevant facts must immediately execute and provide to the University a statutory declaration confirming the Supplier's compliance with this clause 17.
- 17.5 To the fullest extent permitted by law, the Supplier must indemnify the University from and against all claims and losses suffered or incurred by the University arising out of or related to any breach of this clause 17 or a Modern Slavery Law by the Supplier or anyone on its behalf.
- 17.6 Without limiting the University's rights under clause 18, if the Supplier fails to comply with its obligations under this clause 17 or otherwise breaches a Modern Slavery Law, the University may terminate this Agreement immediately by written notice to the Supplier.

18. Termination

- 18.1 Either party may terminate this Agreement by providing written notice to other party if the other party:
- (a) breaches a provision of this Agreement and fails to remedy that breach within 7 days;
 - (b) breaches a material term of this Agreement that is not capable of remedy;
 - (c) is unable or unwilling to comply with any obligation under this Agreement; or
 - (d) suffers an Insolvency Event.
- 18.2 If, in the reasonable opinion of the University, the Supplier has failed to comply with its obligations under this Agreement (including due to a Force Majeure Event), the University may, by written notice, suspend all or part of a Purchase Order, and the Supplier must cease supplying the goods and/or services from the date the notice is received until the University notifies the Supplier in writing to recommence supply.

19. Variation

- 19.1 The University may change or cancel the Purchase Order prior to delivery.
- 19.2 The University agrees to pay any reasonable costs or expenses incurred by the Supplier in reliance on a Purchase Order that is subsequently changed or cancelled by the University.
- 19.3 If, as a result of a change to the Purchase Order made under clause 19.1, the value of the goods and/or services changes, or the Supplier wishes to adjust the delivery times, the Supplier must notify the University immediately and not incur any further expense until the University has agreed to the change, agreed to some other change that satisfies the Supplier, or cancels the Purchase Order (without penalty).

20. Assignment

The Supplier may only assign or novate its rights and obligations under this Agreement with the prior written consent of the University.

21. Disputes

- 21.1 Without limiting a party's right to terminate the Agreement under clause 18, if a dispute arises under this Agreement:
- (a) the disputing party must notify the other party in writing of the dispute and include all relevant details;
 - (b) senior representatives of each party will meet within 10 days to resolve the dispute; and
 - (c) discussions will be held without prejudice.
- 21.2 If no agreement is reached between such representatives within 14 days, a party may commence legal proceedings.
- 21.3 During a dispute, the parties will continue to perform their obligations under this Agreement.
- 21.4 This clause 21 does not prevent a party from seeking urgent or injunctive relief.

22. Fair Dealings

- 22.1 The Supplier warrants that:
- (a) to the best of the Supplier's knowledge and belief, and after due enquiry, no perceived, actual, or potential conflict of interest (including family or close personal relationships, or Personal Interest) exists between any Supplier Personnel and University Personnel, other than as disclosed to the University in writing prior to the date of the Purchase Order; and
 - (b) it has not engaged in any anti-competitive behaviour (including without limitation price fixing, market sharing, restricting outputs or bid rigging, or any corrupt or fraudulent dealings) in relation to the supply of goods and/or services under the Purchase Order.
- 22.2 The Supplier must notify the University immediately in writing if it becomes aware of anything contained within clause 22.1(a) and/or 22.1(b) arising during the term of this Agreement.
- 22.3 If the University is notified of a matter under clause 22.1(a) or 22.1(b), it may:
- (a) in relation to a conflict of interest, promptly seek to resolve the conflict of interest with the Supplier and if the Supplier fails to do so to the reasonable satisfaction of the University, cancel the Purchase Order and/or terminate this Agreement by giving 7 days' written notice;
 - (b) in relation to a matter in clause 22.1(a), immediately cancel the Purchase Order and/or terminate this Agreement; or
 - (c) take any other action it considers appropriate.

23. Supplier Code of Conduct

The Supplier warrants that it will:

- (a) comply with the University's Supplier Code of Conduct (**Code**) as published on the University's website or provided to the Supplier from time to time; and
- (b) will work with the University to meet its obligations under the Code.

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24. Public Interest Disclosures

- 24.1 This clause 24 only applies if the Supplier is providing services, or exercising functions, on behalf of the University.
- 24.2 Words used in this clause 24 which have a defined meaning in the *Public Interest Disclosures Act 2022 (NSW) (PID Act)* have the same meaning as in the PID Act, unless the context indicates otherwise.
- 24.3 The Supplier must ensure all individuals involved in providing services under this Agreement are aware:
- (a) that they are a public official under the PID Act;
 - (b) of how to make a voluntary public interest disclosure (**PID**); and
 - (c) that, if dissatisfied with the way in which a voluntary PID has been dealt with, they may be entitled to take action under the PID Act or another law.
- 24.4 The Supplier must comply with all reasonable requests of the University in connection with its obligations under the PID Act, including to assist in investigations of serious wrongdoing where required.
- 24.5 The Supplier acknowledges that the University is required to take corrective action if an investigation finds that serious wrongdoing or other misconduct has occurred.
- 24.6 The Supplier must provide written notice to the University immediately upon becoming aware:
- (a) that a voluntary PID has been made that either relates to the University, or where the maker of the disclosure is known to be a public official associated with the University; or
 - (b) that serious wrongdoing has been committed, or is alleged to have been committed, by an individual providing services under this Agreement.
- 24.7 Without limiting the University's rights under clause 18, the University may terminate this Agreement:
- (a) if an allegation of substance about serious wrongdoing is made against the Supplier or any person or body involved in providing services under this Agreement; or
 - (b) in response to a finding of serious wrongdoing or other misconduct involving any person or body providing services under this Agreement.
- 24.8 If the Supplier subcontracts any part of this Agreement, the Supplier must ensure that the contractual arrangement with the third party includes terms equivalent to this clause 24.

25. Access to Information under the Government Information (Public Access) Act 2009 (NSW)

- 25.1 This clause 25 only applies if the Supplier is a private sector entity and is providing services to the public on behalf of the University.
- 25.2 Words used in this clause 25 which have a defined meaning in the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)* have the same meaning as in the GIPA Act, unless the context indicates otherwise.

- 25.3 The Supplier must, at its own cost and within 7 days of receiving a written request by the University, provide the University with immediate access to the following information contained in records held by the Supplier:

- (a) information that relates directly to the performance of the services under this Agreement;
- (b) information collected by the Supplier from members of the public to whom it provides, or offers to provide, the services under this Agreement; and
- (c) information received by the Supplier from the University to enable it to provide the services pursuant to this Agreement.

- 25.4 For the purposes of clause 25.3, information does not include those categories of information set out in section 121(2) of the GIPA Act.

- 25.5 Without limiting the University's rights under clause 18, if the Supplier fails to comply with a request in this clause 25, the University may issue a breach notice to the Supplier. If the Supplier fails to remedy the breach in accordance with the notice, the University may terminate this Agreement immediately.

26. Force Majeure

- 26.1 Neither party will be liable for a failure or delay in performing its obligations under this Agreement to the extent the delay or failure is directly attributable to a Force Majeure Event.
- 26.2 The party claiming a Force Majeure Event must:
- (a) as soon as practicable, notify the other party of the Force Majeure Event and its expected duration and consequences;
 - (b) use its best endeavours to minimise the consequences of the Force Majeure Event and to resume performance of the affected obligations; and
 - (c) continue to perform all unaffected obligations in accordance with this Agreement.
- 26.3 The University is not required to pay any Fees under this Agreement for any goods and/or services that the Supplier is unable to provide as a result of a Force Majeure Event.
- 26.4 The University may by written notice to the Supplier immediately terminate this Agreement if a Force Majeure Event substantially prevents, hinders or delays performance of this Agreement for a period in excess of 30 days.

27. General

- 27.1 The goods supplied under an Agreement must be suitably packed and prepared for shipment to secure the goods against damage, enable the lowest transport and insurance rates to be obtained, and otherwise comply with the carrier's requirements.
- 27.2 This Agreement is governed by and construed in accordance with the laws of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
- 27.3 This Agreement is not exclusive and the University may procure similar or identical goods and/or services from other suppliers.

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- 27.4 If required to do so under the *Government Information (Public Access) Act 2009* or otherwise, the Supplier acknowledges and agrees that the University may publish details of this Agreement.
- 27.5 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement remains otherwise in force apart from such provision, which is deemed deleted.
- 27.6 Waiver of any right arising from a breach of this Agreement must be in writing and executed by the party granting the waiver. A failure to exercise, a delay in exercising or a partial exercise of a right created under or arising from a breach of this Agreement does not result in a waiver of that right.
- 27.7 This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.