

The University of Newcastle Purchase Order Terms & Conditions



1. Application

- 1.1 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**).
- 1.2 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.

2. Formation of Agreement

- 2.1 By issuing a Purchase Order, the University is making an offer to the Supplier.
- 2.2 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.
- 2.3 These terms and conditions, together with the Purchase Order, form the terms of the Agreement between the University and the Supplier.
- 2.4 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.

3. Delivery or installation

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

4. Title

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

5. Payment

- 5.1 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**).
- 5.2 Subject to clause 16.3, 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.

- 5.3 All prices stated in the Purchase Order for any taxable supply must include any Goods and Services Tax (**GST**) payable.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 The University may set-off any outstanding debt, retention money or other outstanding amount owed by the Supplier before paying the Fees.

6. Subcontracting

- 6.1 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.
- 6.2 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.

7. Health and safety

- 7.1 In relation to any supply of goods and/or services under this Agreement, the Supplier will:
 - (a) ensure the goods and/or serviced 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 the University's policies, rules and procedures; 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.
- 7.2 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.
- 7.3 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.

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8. Indemnity

8.1 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.

9. Insurance

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

9.2 The Supplier will ensure any subcontractors engaged by it are insured to at least the same level as the Supplier.

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

10. Warranties

10.1 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;
- (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.

11. Return, repair or replacement of goods

11.1 If goods do not meet the warranted standards set out in this Agreement, or are defective in any way upon receipt by the University, the University may:

- (a) require the Supplier to replace the goods with equivalent goods that are not defective;

(b) require the Supplier to repair the goods to the University's satisfaction; or

(c) return the goods to the Supplier for a full refund.

11.2 Any cost incurred by the University in exercising its rights under this clause 11 will be borne by the Supplier.

12. Intellectual Property

12.1 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.

12.2 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.

12.3 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.

12.4 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.

13. Confidentiality

13.1 If the University provides the Supplier with any Confidential Information, then the Supplier will:

(a) use the Confidential Information solely for the purposes of supplying the goods and/or services;

(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 University;

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

(d) promptly notify the University if the Supplier 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 University.

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

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14. 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.

15. Termination

15.1 The University may terminate this Agreement by providing written notice to the Supplier if it:

- (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; or
- (c) is unable or unwilling to comply with any obligation under this Agreement.

15.2 Either party may terminate this Agreement with immediate effect if the other party suffers an Insolvency Event.

15.3 The University may, at any time 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.

16. Variation

16.1 The University may change or cancel the Purchase Order prior to delivery.

16.2 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.

16.3 If 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).

17. Assignment

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

18. Disputes

18.1 Without limiting the University's right to terminate the Agreement under clause 15, 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.

18.2 If no agreement is reached between such representatives within 14 days, a party may commence legal proceedings.

18.3 During a dispute, the parties will continue to perform their obligations under this Agreement.

18.4 This clause 18 does not prevent a party from seeking urgent or injunctive relief.

19. General

19.1 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.

19.2 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.

19.3 This Agreement is not exclusive and the University may procure similar or identical goods and/or services from other suppliers.

19.4 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.

19.5 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.

19.6 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.

19.7 This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

20. 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.

Confidential Information means all information which is disclosed to the Supplier (whether before or after the date of an Agreement) by or on behalf of the University, or which the Supplier otherwise acquired from the University, 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 the University as being confidential; or
- (c) the Supplier knows or ought to know is confidential.

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

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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.

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.

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);
- (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.

21. 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.