



UNIVERSITY OF WOLLONGONG

Purchase Order

TERMS AND CONDITIONS

1. APPLICATION

- 1.1 By accepting a Purchase Order from the University, the Supplier named in that Purchase Order agrees to the following terms and conditions as applying to the provision of the Goods or Services under that Purchase Order. These terms and conditions prevail over any terms and conditions of the Supplier and constitute the entire agreement between the Parties with respect to the subject matter of the Purchase Order and supersede all prior agreements or understandings.
- 1.2 Any amendments or changes made by the Supplier to the Purchase Order will not be binding on the University unless expressly agreed in writing and signed by the University.
- 1.3 When the Supplier: (a) acknowledges the Purchase Order; or (b) delivers the Goods or Services ordered in the Purchase Order; or (c) commences the work ordered under the Purchase Order (whichever occurs earliest); the Supplier is deemed to have accepted the Purchase Order and these Purchase Order Terms and Conditions without the need for further action, and the date of such acceptance is the Commencement Date of this Agreement.
- 1.4 Where the Supplier has entered into an ongoing Master Supply Agreement with the University, the Master Supply Agreement Terms and Conditions will apply to that Purchase Order, and these Purchasing Order Terms and Conditions will not apply to that Purchase Order.

2. DEFINITIONS

- 2.1 **Agreement** means the Purchase Order and these Purchase Order Terms and Conditions.
- 2.2 **Confidential Information** means all data, documentation or information (“**Information**”) disclosed by one Party to the other Party relating to the provision of Goods and/or Services in the Purchase Order that is by its nature confidential, or that the disclosing Party has designated as confidential, but does not include:
 - (a) Information in the public domain other than by breach of these terms and conditions; or
 - (b) Information already known to the receiving Party at the time of disclosure; or
 - (c) Information that is authorised or required to be disclosed by law.
- 2.3 **Goods or Services** means any goods or services provided to the University by the Supplier as described in the Purchase Order.
- 2.4 **Intellectual Property or IP** means all intellectual property rights, including: (a) patents, plant breeder’s right, copyright, rights in circuit layouts, registered designs, trade marks, and any right to have Confidential Information kept confidential; and (b) any application or right to apply for registration of any of the rights referred to in paragraph (a), but for the avoidance of doubt excludes Moral Rights and similar non-assignable personal rights of any person.
- 2.5 **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth) and any corresponding State or Territory legislation.
- 2.6 **Moral Rights** means in relation to an author: (a) a right of attribution of authorship; or (b) a right not to have authorship falsely attributed; or (c) a right of integrity of authorship.
- 2.7 **Purchase Order** means a commercial document issued by the University to the Supplier primarily for the purpose of processing payments relating to a procurement.
- 2.8 **Party** means either the University or the Supplier, as the context permits, and “**Parties**” shall mean both of them.
- 2.9 **Specification** means any additional specifications or standards referenced or attached to the Purchase Order.
- 2.10 **Supplier** means the person or entity providing the Goods or Services as named in the Purchase Order.
- 2.11 **Supplier Code of Conduct** means the University’s statement of its procurement commitments and the corresponding behaviours expected of its suppliers, which is published at: <https://documents.uow.edu.au/content/groups/public/@web/@gov/documents/doc/uow058712.pdf>.



- 2.12 **University** means the University of Wollongong (ABN 61 060 567 686) acting on behalf of itself and any of its related entities where authorised by those related entities from time to time.
- 2.13 **Warranty Period** means the period commencing on the date of the supply of the complete Goods or Services and lasting for a period of one (1) year unless otherwise agreed.

3. SUPPLIER'S WARRANTIES

- 3.1 The Supplier must comply with any reasonable instructions, guidelines, policies or codes of conduct of the University relevant to the provision of the Goods and/or Services and as notified by the University.
- 3.2 The Supplier warrants that all Goods and Services provided to the University:
- (a) are suitable for the purpose for which they are required;
 - (b) are of merchantable quality;
 - (c) comply with the Specifications;
 - (d) will be provided with all due skill and diligence and in a good and workmanlike manner; and
 - (e) are of high quality and standard and are in accordance with the best practice within the industry of the Supplier and/or other applicable codes.
- 3.3 The Supplier must correct any defect or failure in the Goods and/or Services without delay and at no cost to the University by way of repair, replacement, modification or other means acceptable to the University during the Warranty Period. This clause 3.3 shall not apply to the extent any defect or failure is attributable to the conduct of the University.
- 3.4 The Supplier represents and warrants to the University that:
- (a) it has the necessary skills, resources and experience to successfully supply the Goods and/or Services in accordance with the requirements of this Agreement, and the Specifications;
 - (b) it has the power and capacity to enter and perform its obligations under this Agreement;
 - (c) it has all necessary licences, approvals and consents required to perform its obligations;
 - (d) it will comply with WorkCover legislation or such other equivalent legislation;
 - (e) other than as disclosed to the University at the commencement of this Agreement, there is no conflict of interest of the

Supplier or its personnel, and the Supplier will promptly notify the University of any conflicts of interest that arise during the Agreement; and

- (f) it and its personnel will perform its obligations under this Agreement in accordance with all applicable acts, ordinances, rules, regulations and by-laws.

4. SUPPLIER CODE OF CONDUCT

- 4.1 The Supplier represents and warrants to the University that it and its personnel will, at all times:
- (a) comply with the Supplier Code of Conduct,
 - (b) comply with any applicable anti-slavery laws in the jurisdictions in which it operates;
 - (c) comply with the Supplier's own business conduct guidelines and policies concerning Modern Slavery (where these are more stringent than the above); and
 - (d) provide transparent, complete and accurate information about Modern Slavery as requested by the University.
- 4.2 At the University's reasonable request, the Supplier will provide any information reasonably requested to demonstrate such compliance.
- 4.3 The Supplier must promptly notify the University as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain which has a connection with this Agreement and provide the University with appropriate details of any such information obtained.

5. RISK AND TITLE

Title to, and risk in, the Goods and Services passes to the University upon delivery of those Goods and Services to the University.

6. DELIVERY

- 6.1 Goods shall be:
- (a) adequately packaged and protected to ensure safe delivery to the University by any timeframes stated in the Purchase Order;
 - (b) delivered in reusable packaging where possible and such packaging shall be taken back by the Supplier or their courier company unless otherwise agreed at no additional cost to the University;
 - (c) when delivered, be accompanied by a delivery document which must be signed



- by a duly authorised representative of the University at the point of delivery.
- 6.2 The Supplier must perform the Services at any location specified in the Purchase Order and complete the Services by any end date specified in the Purchase Order.
 - 6.3 The Supplier must promptly inform the University of anything that it becomes aware of which is likely to affect the cost, quality or timing of delivery of the Goods or Services, and must investigate how to avoid or minimise any adverse effect.
 - 6.4 Where applicable, all shipments, delivery documents, invoices and correspondence to the University in relation to the Services must be identified with the unique University Purchase Order number.
 - 6.5 Oversupply of any Goods or Services will not be accepted unless authorised by the University prior to delivery.
 - 6.6 No substitute Goods or Services will be accepted without prior written authority from the University.

7. WORK HEALTH AND SAFETY

- 7.1 Delivery of all Goods and/or Services must comply with all relevant legislation including work health and safety (WH&S) and environmental legislation.
- 7.2 The Supplier acknowledges and agrees that the Supplier, and its personnel (and its subcontractor/s) must at all times work in a safe manner and must not by their conduct expose themselves, University staff or students, or others, including members of the general public, to risks to their health or safety.

8. FEES AND PAYMENT

- 8.1 The Supplier will invoice the University in accordance with any agreed Fee specified in the Purchase Order.
- 8.2 No increases in the Purchase Order price will be allowed as a result of the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the proposed supply.
- 8.3 Each invoice submitted by the Supplier must describe the Goods and/or Services supplied; and be a valid tax invoice under relevant GST laws.
- 8.4 The Parties acknowledge that all amounts payable under this Agreement are expressed on a GST exclusive basis but inclusive of all other taxes, duties and charges. Where GST is payable in relation to a taxable supply under GST laws, the amount payable will be the amount specified in this Agreement plus GST.

- 8.5 If the invoice is approved by the University, the University will pay that invoice within 30 days from date of receipt of that invoice by the University.
- 8.6 The Supplier shall be responsible for the payment of all relevant taxes, duties and charges payable with respect to the supply of the Goods and/or Services to the delivery location, unless otherwise specified.

9. CONFIDENTIALITY

- 9.1 Subject to the remainder of this clause 9, the Parties agree that a receiving Party to the other Party's Confidential Information must only use that Confidential Information to perform the receiving Party's obligations under this Agreement without disclosure to any third party.
- 9.2 The receiving Party may only disclose the Confidential Information to its employees, representatives or advisers who have a need to know in order for the receiving Party to perform its obligations under this Agreement, and must keep the Confidential Information secure.
- 9.3 The Supplier acknowledges that the University may be required to disclose information under the *Government Information (Public Access) Act 2009 (NSW)* regarding this Agreement, and this information may include the name of the Supplier, the amount of the fees, the date of the agreement, description of Goods and/or Services and other details.
- 9.4 This clause survives the termination or expiry of a Purchase Order.

10. PRIVACY

- 10.1 The Supplier must not collect, use or disclose personal information or health information (as defined in the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Health Records and Privacy Information Act 2002 (NSW)*), except to the extent reasonably necessary to perform the Supplier's obligations under this Agreement.
- 10.2 The Supplier must handle personal information and health information in accordance with the *Privacy and Personal Information Protection Act 1998 (NSW)* and *Health Records and Information Privacy Act 2002 (NSW)* including the Information Privacy Principles and Health Privacy Principles and any code of practice or guidelines made under those Acts, and must use reasonable endeavours to cooperate with all efforts by the University to cooperate with these laws, codes and guidelines.



- 10.3 The Supplier agrees that it will notify the University immediately if the Supplier becomes aware that a disclosure of personal information may be required by law or if the Supplier has breached or will breach any of these terms and provide all reasonable assistance and cooperation to the University in the management of any misuse, loss, unauthorised access, modification or disclosure of personal information.
- 10.4 This clause survives the termination or expiry of a Purchase Order.

11. RECORD-KEEPING AND ACCESS TO DOCUMENTS

- 11.1 The Supplier must at all times maintain proper records and accounts relating to this Agreement.
- 11.2 The Supplier further acknowledges that the University has obligations under the *Government Information (Public Access) Act 2009* (NSW). To assist the University in meeting its obligations under this Act, the Supplier must, within 7 days of receiving a written request by the University, without charge provide the University with immediate access to information that the Supplier holds in relation to the performance of the Services or provision of the Goods provided to the University by the Supplier pursuant to this Agreement.
- 11.3 This clause survives the termination or expiry of a Purchase Order.

12. INTELLECTUAL PROPERTY

- 12.1 Subject to clause 12.2 below, neither Party assigns any of its existing Intellectual Property rights to the other Party through provision or acceptance of Goods and/or Services under this Agreement.
- 12.2 The Supplier agrees that all Intellectual Property created in the course of supplying the Goods and/or Services to the University shall vest in and remain the property of the University.
- 12.3 Where use of the Goods and/or Services require the University to access Intellectual Property belonging to third parties, this will be specified in the Purchase Order or otherwise communicated to the University.

13. INSURANCE

- 13.1 The Supplier shall maintain at its expense the following insurances:

- (a) Public liability (personal and property) for an amount not less than \$10 million per event;
- (b) Professional indemnity for an amount not less than \$5 million per event; and
- (c) Workers compensation insurance or self insurance as required by law.

- 13.2 Upon request by the University, the Supplier shall provide evidence of such insurances to the University.

14. INDEMNITY

- 14.1 The Supplier must indemnify and keep indemnified the University and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses, to the extent that such claims, demands, proceedings, liabilities, costs, charges and expenses arise as a result of:
- (a) any act or omission of the Supplier, its employees, agents or subcontractors which constitutes a breach of its obligations under this Agreement;
- (b) any negligent or unlawful act or omission of the Supplier, its employees, agents or subcontractors in the performance of the Supplier's obligations under this Agreement;
- (c) any claim, demand, suit, action or proceeding for an infringement, or an alleged infringement, of the Intellectual Property rights of any person, which occurred because of the purchase, possession or use of the Goods or the provision of the Services.
- 14.2 The Supplier's liability will be reduced proportionately to the extent that any part of the claims, demands, proceedings, liabilities, costs, charges and expenses in question result from the University's breach or wilful misconduct or unlawful or negligent act or omission in connection with the Agreement.
- 14.3 This clause survives the termination or expiry of a Purchase Order.

15. TERMINATION AND SUSPENSION

- 15.1 The University may at any time before delivery, change or terminate the Purchase Order. If the Supplier has already incurred expense in arranging the order or delivery of the Good and/or Services, the University agrees to pay for the Supplier's reasonable costs or expenses incurred.
- 15.2 The University may terminate a Purchase Order immediately by written notice to the Supplier if:



- (a) the Supplier has failed to supply the Goods and/or Services in accordance with the Purchase Order;
 - (b) the Supplier commits a material 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, or the breach is not capable of remedy;
 - (c) the Supplier being a company, becomes insolvent or goes into liquidation or provisional liquidation or enters into any arrangement or composition with its creditors, or any action is taken for the appointment of an administrator or official manager or receiver over the assets of the Supplier; or
 - (d) the Supplier, being an individual, commits an act of bankruptcy as defined in the *Bankruptcy Act 1966* (Cth).
- 15.3 The Supplier may terminate a Purchase Order immediately by written notice to the University if:
- (a) the University commits a material 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 Supplier specifying the breach, or the breach is not capable of remedy;
 - (b) the University becomes insolvent or goes into liquidation or provisional liquidation or enters into any arrangement or composition with its creditors, or any action is taken for the appointment of an administrator or official manager or receiver over the assets of the University.
- 15.4 Upon termination, where the University has paid the Supplier, within fourteen (14) days of termination, the Supplier must reimburse the University for the portion of Goods and/or Services not yet delivered or supplied to the University.
- 15.5 Either party may, at any time by written notice, request the suspension of a Purchase Order where reasonably necessary to protect its legitimate business interests, including in extenuating circumstances beyond its reasonable control. The parties agree to negotiate in good faith with respect to any such request, including the length of any suspension. If agreement cannot be reached either party may terminate a Purchase order by immediate written notice and clause 15.4 shall apply.

16. DISPUTES

- 16.1 If at any time the Supplier considers that there is any ambiguity in any Purchase Order, it must immediately notify the University. If the University considers that there is no such ambiguity it must notify the Supplier accordingly, giving its interpretation of the item claimed by the Supplier to be ambiguous. If the University agrees that there is ambiguity the Parties must use reasonable efforts to resolve the matter promptly which may necessitate amending the Purchase Order.
- 16.2 If a dispute arises out of, or relates to this Agreement, a Party may not commence any court proceedings relating to the dispute unless it has notified the other Party and endeavoured to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation or negotiation or similar techniques agreed by them.
- 16.3 Notwithstanding any dispute between the Parties, the Supplier's obligations to supply under the Agreement continue in full force and effect.

17. GENERAL

- 17.1 Neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its reasonable control including but not limited to, acts of God or governmental acts, flood, fire, explosion, accident, civil commotion, industrial dispute, transportation or communications problems, or impossibility of obtaining materials.
- 17.2 The Supplier agrees that it will not be taken to be and must not represent that it is the employee, partner, officer and/or agent of the University or any of its related entities.
- 17.3 Any notice to be given by one Party to the other must be in writing and sent to the other Party using the contact details set out in the relevant Purchase Order unless otherwise notified.
- 17.4 The Supplier must not subcontract or assign all or any part of this Agreement without the prior written consent of the University. In seeking the University's consent, the Supplier must provide full particulars of the Services to be subcontracted or assigned, together with details of the proposed subcontractor. The University's consent to allow subcontracting in no way relieves the Supplier of any of its obligations under this Agreement.
- 17.5 The University must not assign all or any part of this Agreement without the prior written consent of the Supplier.



UNIVERSITY
OF WOLLONGONG
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- 17.6 A waiver in respect of a breach of a provision of this Agreement by a Party shall not be taken to be a waiver in respect of any other breach. The failure of either party to enforce any provision of this Agreement will not be interpreted as a waiver of that provision.
- 17.7 If any part of this Agreement is void or voidable, then that part is severed from this Agreement without affecting the continued operation of the remainder of this Agreement.
- 17.8 This Agreement is governed by the laws of New South Wales and the Parties submit to the exclusive jurisdiction of the courts of New South Wales.