

These terms and conditions apply to the order of the Goods and/or Services by the University as set out in the accompanying Purchase Order.

Where there is an Agreement, it prevails over these Purchase Terms to the extent of any inconsistency.

Where there is no Agreement, these Purchase Terms (including the Purchase Order) apply.

## 1. Offer and Acceptance

- (a) The Supplier is taken to have accepted a Purchase Order if they notify the University that they accept the Purchase Order or supply the Goods and/or Services described in the Purchase Order.
- (b) If the Supplier does not accept a Purchase Order, they must notify the University promptly and prior to delivery. The Supplier may propose a variation to the Purchase Order or offer other Goods and/or Services in substitution, but any changes must first be approved in writing by the University before delivery. Failing such written approval, the University may reject the Goods and/or Services.
- (c) The Purchase Order, once accepted, together with these terms and conditions (**Purchase Terms**) and any Agreement, if applicable, will bind the parties.

## 2. Delivery, Title and Risk

- (a) Time will be of the essence with respect to the Supplier's delivery obligations under the Purchase Order. The Goods and/or Services must be delivered to or performed at the site identified in the Purchase Order (or otherwise agreed to in writing by the University), by the date specified in the Purchase Order (or if no time is specified, as soon as practicable and in any event within a reasonable time). Where the University has notified the Supplier of a nominated person(s) to whom the Goods and/or Services are to be delivered, the Supplier must ensure the Goods and/or Services are delivered to that person. The Supplier must provide a delivery advice with each delivery stating the Purchase Order number.
- (b) Where the Purchase Order relates to Goods, 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.
- (c) Where Goods are provided:
  - (i) risk in the Goods will pass to the University when the Goods are delivered to the delivery site or when the Supplier releases the Goods to a logistics carrier appointed by the University (as applicable); and
  - (ii) title in the Goods will pass to the University on the earlier of (A) receipt of those Goods in accordance with these Purchase Terms or (B) payment by the University of the Purchase Order.

## 3. Acceptance Testing

- (a) The University may reject the Goods and/or Services within ten (10) Business Days after delivery or such longer period as agreed to in writing by the parties (**Acceptance Period**), if the Goods and/or Services do not comply with the Purchase Terms and any applicable Agreement.
- (b) The University will approve the Goods and/or Services if they are in accordance with these Purchase Terms and any applicable Agreement. If the University does not notify the Supplier within the Acceptance Period, the University will be taken to have accepted the Goods and/or Services. If, acting reasonably, the University rejects the Goods and/or Services, it will issue a written notice with the reasons for rejection to the Supplier and the remedy required to ensure the Goods and/or Services are in accordance with the Purchase Terms and any applicable Agreement. No payments will be due for rejected Goods and/or Services unless or until the Goods and/or Services are accepted by the University, acting reasonably. Where the University has prepaid any fees in respect of such rejected Goods and/or Services. Upon request, the Supplier agrees to promptly refund

to the University such prepaid fees in respect of the Goods and/or Services that are reasonably rejected by the University under this clause 3.

## 4. Intellectual Property

- (a) Except as set out in clause 4(b), neither party will have any claim, ownership or interest in the other party's Background Intellectual Property.
- (b) The Supplier grants to the University a non-exclusive, world-wide, royalty-free and sub-licensable licence to use, modify and adapt any Background Intellectual Property in, or otherwise required by the University in order to use, the Goods and/or Services for their intended purpose.
- (c) Unless otherwise agreed in writing by the parties, the University will own, and the Supplier assigns to the University, from the date of its creation, all Intellectual Property that is created by the Supplier in the course of the Supplier providing the Goods and/or Services.
- (d) The Supplier must, at its own cost (unless otherwise agreed in writing by the parties), do all things reasonably requested by the University to enable the University to secure the rights under this clause 4.

## 5. Moral Rights

- (a) If relevant to enable the University to enjoy the full benefit of the Services (including the Contract Material), the Supplier must use reasonable endeavours to obtain written consent from relevant employees, agents and subcontractors to any acts or omissions by the University that might otherwise infringe the Moral Rights of the employees, agents or subcontractors.
- (b) The Supplier agrees that such consent:
  - (i) is genuinely given and has not been induced by duress or any false or misleading statement; and
  - (ii) extends to acts or omissions by the University and its assigns.
- (c) The Supplier must arrange for its employees, agents and subcontractors to execute all documents and do all things required by the University to give effect to this clause 5.

## 6. Warranties and Representations

The Supplier warrants, represents and undertakes to the University that:

- (a) they have full power, legal right and authority to enter into and perform their obligations under these Purchase Terms;
- (b) they have either declared any actual or perceived conflicts of interest that exist or might arise, or that no conflicts of interest exist or are anticipated relevant to the performance of their obligations under these Purchase Terms and, if applicable, the Agreement. If any conflict or potential conflict arises during the provision of the Goods and/or Services, the Supplier will immediately notify the University and comply with any reasonable written notice given to the Supplier by the University to address or manage such conflict;
- (c) they will provide the Goods and/or Services specified in the Purchase Order:
  - (i) in accordance with these Purchase Terms and the Agreement (if applicable);
  - (ii) any reasonable instructions or directions of the University;
  - (iii) with all reasonable care, skill and diligence in a proper, professional, timely, cost effective and workman-like manner; and
  - (iv) in accordance with any service levels, specifications or standards set out in the Purchase Order; and
  - (v) in compliance with all applicable laws, statutes, regulations, standards and codes;
- (d) for a period of 12 months after delivery (or such other period agreed by the parties in writing), the Goods and Services will be free from defects, and errors or omissions of design, materials,

performance and workmanship, will be fit for the purpose for which they are provided, will be of good and merchantable quality, and may be used without risk to health or safety, provided such use by the University complies with applicable laws and these Purchase Terms and the Agreement (if applicable);

- (e) it will not knowingly or negligently damage or destroy any part of the University's data, networks, systems, devices or computers, or knowingly or negligently introduce any viruses or similar programming effects into the same;
- (f) to the best of their knowledge and belief, the use by the University of any products, goods, materials or services provided in connection with the Goods and Services, and any relevant Background Intellectual Property, will not breach any third-party rights (including Intellectual Property rights);
- (g) in providing the Goods and Services, they will not be in breach of any obligation owed to any person and they hold all licenses and approvals necessary for the lawful provision of the Goods and Services and ensuring that the University has the full benefit of the Goods and Services in accordance with these Purchase Terms and the Agreement (if applicable).

## 7. Cancellation, Changes and Termination

- (a) If the University wishes to change a Purchase Order, it may do so at any time before delivery of the Goods and/or Services by reasonable prior written notice to the Supplier. If the Supplier does not agree to the change, the Supplier may cancel the Purchase Order and the University will pay the Supplier for Services already performed in accordance with these Purchase Terms and the Agreement (if applicable), and any reasonable costs which the Supplier has unavoidably incurred in order to supply the Services or deliver the Goods.
- (b) Either party (**First Party**) may terminate these Purchase Terms by written notice to the other party:
  - (i) where the other party is in material breach of any provision of these Purchase Terms or applicable Agreement, and the breach is not capable of remedy or, where the breach is capable of remedy, they fail to remedy that breach within 14 days' written notice specifying the breach and the intention of the First Party to terminate if the breach is not remedied; or
  - (ii) where the other party suffers an Insolvency Event, to the extent the First Party is permitted by law to terminate for such Insolvency Event.

Such termination will take effect immediately or upon such later date specified in the written notice.

- (c) Where the Purchase Terms are terminated pursuant to this clause 7, the Supplier will perform all of their obligations up to the effective date of termination, and the University will only be liable for the fees that are payable in respect of those obligations and incurred up to that date of termination, and reasonable costs incurred by the Supplier and directly attributable to the termination. The Supplier must stop work as specified in the written notice, and both parties must take all available steps to minimise loss arising from the termination. No fees, costs or expenses will be payable by the University after the date of termination, and any pre-paid fees relating to obligations of the Supplier that were not performed or rendered up to the date of termination shall be refunded to the University on a pro-rata basis.
- (d) Either party may cancel a Purchase Order without cause by giving one month's written notice to the other party. Where such notice is provided, the Supplier must stop work as specified in the notice and take all available steps to minimise loss arising from the cancellation. The University will be liable for any reasonable costs (excluding, without limitation, loss of profits) unavoidably incurred by the Supplier and directly attributable to the cancellation.
- (e) To the extent permitted by law, neither party will make a claim against the other in respect of any loss of profits that arise as a result of the change or cancellation of a Purchase Order, or the termination of a Purchase Order, under this clause 7.
- (f) Clauses 4, 5, 6(d), 7(e), 7(c), 8, 9, 10, 14, 15, 16 and 17 survive the expiration or termination of these Purchase Terms.

## 8. Liability and Indemnity

- (a) To the extent permitted by law:
  - (i) each party excludes liability (including liability in negligence) for any consequential or indirect loss or damage, including for example loss of revenue, wasted overheads, loss of opportunity, loss of profit and any costs or damages sustained as a result of a claim by a third party, which may arise in respect of the Goods and/or Services or otherwise in connection with this Agreement;
  - (ii) each party's total liability to the other party arising out of or in relation to these Purchase Terms is limited in the aggregate to the greater of \$500,000 or an amount equal to three (3) times the total value of the fees (**Liability Cap**). The Liability Cap does not apply to:
    - A. personal injury or death to the extent caused by the negligence of a party, its employees, subcontractors, contractors or agents;
    - B. loss of or damage to real or personal property to the extent caused by the negligence of a party, its employees, subcontractors, contractors or agents;
    - C. infringement of Intellectual Property;
    - D. fraud or fraudulent misrepresentations;
    - E. loss of data; or
    - F. breach of the confidentiality or privacy obligations in clause 9.
- (b) Subject to clause 8(a), the Supplier indemnifies the University against all claims, demands, charges, losses, liabilities, or expenses made against or incurred by the University arising as a result of:
  - (i) any wilful breach of these Purchase Terms by the Supplier, or its officers, employees, agents or subcontractors;
  - (ii) any negligent act or omission, by the Supplier, or its officers, employees, agents or subcontractors in connection with the supply of the Goods and/or Services, these Purchase Terms or applicable Agreement,

except to the extent to which such claims, demands, charges, losses, liabilities or expenses are caused by or contributed to by the University.

## 9. Compliance and Confidentiality

- (a) Each party must keep confidential, and ensure its employees, agents and approved subcontractors keep confidential, all Confidential Information of or relating to the other party, these Purchase Terms, and the Goods and Services.
- (b) Each party must immediately notify the other party if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other party's Confidential Information and provide such reasonable assistance as required by the other party to deal with such an event, including such assistance as may reasonably be required by the other party in relation to any proceedings the other party may take against any person or entity for unauthorised use, copying or disclosure of Confidential Information.
- (c) Each party must, to the extent legally permitted to do so, immediately notify the Disclosing Party of any disclosure of its Confidential Information required by law and, before making any such disclosure, provide the Disclosing Party with a reasonable opportunity to minimise the extent of such disclosure, including challenging the requirement or obtaining an order or ruling to preserve confidentiality.
- (d) At any time upon the written request of the Disclosing Party, the Receiving Party will, at its own expense, promptly destroy or return to the Disclosing Party (at Disclosing Party's option) any documents which embody the Disclosing Party's Confidential Information.
- (e) The Receiving Party will not be required to delete or destroy any electronic back-up files that have been created solely by its

automatic or routine archiving and back-up procedures, to the extent created and retained in a manner consistent with such procedures.

- (f) The Supplier and the Goods and Services must comply with, and not cause the University to breach, any relevant laws, and University policies notified to or made available to the Supplier, including in relation to the environment, labour hire licensing, health, safety and security.
- (g) Each party must handle Personal Information (including Sensitive Information) and Health Information in accordance with any applicable privacy laws, including the *Privacy and Data Protection Act 2014* (Vic) and *Health Records Act 2001* (Vic). Each party must use reasonable endeavours to cooperate with the other party in complying with these laws and associated principles, including responding to a complaint or a suspected or actual privacy breach. Each party must also ensure that it complies with the *Privacy Act 1988* (Cth) and the European Union's General Data Protection Regulation (EU2016/679) to the extent that its articles are applicable to the Goods and/or Services.

## 10. Payment Terms and GST

- (a) The University is not obliged to pay any fees or expenses to the Supplier unless and until it is satisfied, acting reasonably, that the Supplier has provided or performed the Goods and/or Services in accordance with these Purchase Terms and any applicable Agreement.
- (b) The University will pay all correctly rendered tax invoices within 30 days after the end of the month in which the invoice is dated, or within such other period as agreed in writing with the Supplier. The Supplier's tax invoice must:
  - (i) clearly state the Purchase Order number;
  - (ii) where the Supplier has an Australian Business Number (ABN), the Supplier's ABN;
  - (iii) be sent to the University billing address listed on the Purchase Order;
  - (iv) clearly state the cost of the Goods and/or Services and the amount of GST (if any) in accordance with the amounts in the Purchase Order; and
  - (v) set out clear instructions on how payment can be made to the Supplier.
- (c) Where a Supplier's tax invoice does not comply with clause 10(b), upon request from the University the Supplier must reissue the tax invoice in a form that is compliant with clause 10(b).
- (d) Where the Supplier does not provide the University with its ABN, the University will withhold Pay-As-You-Go income tax from the fees set out in the Purchase Order except in the following circumstances:
  - (i) the Supplier does not have an ABN because the Supplier is an individual who does not carry on an enterprise and the Supplier has provided the University with a written notice which is signed by an authorised representative of the supplier, stating the same; or
  - (ii) the Supplier does not have an ABN because it is an overseas entity and no part of the Services are to be performed in Australia, and the Supplier has provided to the University a "statement by supplier" form currently available at <https://www.ato.gov.au/uploadedFiles/Content/MEI/downloads/Statement%20by%20a%20supplier.pdf>.
- (e) Unless otherwise agreed in writing by the parties, the fees set out in the Purchase Order are fixed, inclusive of all taxes, packaging, delivery and other expenses or costs, are the only amount the University is required to pay in relation to the Goods and/or Services under these Purchase Terms, and include the cost of all services, functions and responsibilities that are not specifically described but which are incidental to the provision of the Goods and Services.
- (f) The University may withhold from payment any invoiced amount that it disputes in good faith until the dispute is resolved in

accordance with clause 16.

- (g) The University is entitled to set off any amount owed to the Supplier against any amount payable by the Supplier at any time in connection with these Purchase Terms.
- (h) Unless stated otherwise, any amount payable under or in connection with these Purchase Terms includes an amount on account of the GST (if any) payable by the supplying party in respect of the supply. In this paragraph, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

## 11. International Transactions

- (a) This clause 11 applies where the Supplier is not a resident of Australia and does not conduct an enterprise in Australia.
- (b) The Supplier is solely responsible for any Transaction Tax and other payments incurred in acquitting tax and legal liabilities in its country of residence that relate to the supply of the Goods and/or Services, unless otherwise agreed in writing by the parties.
- (c) The Supplier acknowledges that they rely on their own independent investigation, professional and other tax, legal and accounting advice and risk assessment in connection with these Purchase Terms, the Agreement (if applicable), and the supply of the Goods and/or Services.

## 12. Modern Slavery

The Supplier must:

- (a) take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the supply of the Goods and/or Services;
- (b) where they become aware of Modern Slavery practices in the operations and supply chains used in the performance of these Purchase Terms (and, if applicable, the Agreement), as soon as reasonably practicable take all reasonable action to address or remove these Modern Slavery practices including, where relevant, by addressing any practices of other entities in its supply chains; and
- (c) provide all reasonable assistance to the University to allow the University to comply with its obligations under the *Modern Slavery Act 2018* (Cth), including provision of all information reasonably requested by the University in connection with the Supplier's compliance with this clause 12.

## 13. Hazardous Substances

Where the Supplier knows, or ought to know, that they are supplying Hazardous Substances to the University, they must:

- (a) provide the University with relevant information about the hazards and risks associated with the use of such Hazardous Substances prior to or, where relevant, at the time of the supply; and
- (b) comply with relevant laws, Australian standards, code of practice and other guidelines in relation to the supply.

## 14. Insurance

- (a) Except where otherwise agreed in writing by the parties, the Supplier must effect and maintain adequate insurances, including workers' compensation insurance as required by law and such other insurance policies that a prudent person supplying and delivering the Goods and/or Services would obtain and maintain including, without limitation, insurance policies for goods in transit and product liability insurance in the case of Goods, to cover the performance of their obligations under these Purchase Terms.
- (b) On reasonable request, the Supplier must provide written proof of currency of such insurance to the University.

## 15. Records and Audit

- (a) The Supplier must keep adequate records in accordance with generally accepted accounting standards concerning the performance of this Agreement.
- (b) The University, and any third party authorised in writing by the University, may audit and inspect the Supplier's records

maintained pursuant to clause 15(a) at any time on reasonable notice in order to assess the Supplier's compliance with these Purchase Terms.

## 16. Dispute Resolution

If a dispute arises between the parties in relation to Purchase Terms, then the parties agree to negotiate in good faith on a commercially realistic basis to resolve the dispute. If a dispute cannot be resolved by negotiation within 30 Business Days of one party notifying the other in writing of the issue(s) in dispute, the matter must be referred to mediation at an agreed alternative dispute resolution forum in Melbourne, Victoria, or in the absence of an agreed forum, by a person appointed by the Chair of the Resolution Institute, or the Chair's designated representative, before either party may commence any legal proceedings in relation to the dispute (other than for urgent interlocutory relief).

## 17. General

- (a) No variation, addition or modification of these Purchase Terms is effective unless made in writing and signed by each party.
- (b) These Purchase Terms or, where relevant, the Agreement, represent the parties' entire agreement in relation to the subject matter and replace, override and supersede all previous agreements about the subject matter and any terms provided by the Supplier (including in a Supplier quote, invoice, or website), unless incorporated into the Agreement.
- (c) These Purchase Terms are governed by the laws of Victoria, Australia. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of Victoria, Australia.
- (d) Nothing in these Purchase Terms is intended to constitute a fiduciary or employment relationship or an agency, partnership or trust, and neither party has authority to act for or bind the other party.
- (e) The Supplier is responsible for its own employees, agents and authorised subcontractors, and for the payments of salary, leave entitlements and any other employer obligations in respect of its employees, including superannuation and WorkCover insurance, and the payment of taxes imposed on employers in respect of employees.
- (f) Neither party must assign or subcontract any part of the supply of the Goods and/or Services, or these Purchase Terms, without the prior written consent of the other party, which will not be unreasonably withheld. Approval to subcontract will not relieve the Supplier of any liability or obligations under these Purchase Terms (including the Purchase Order).
- (g) Each party must do all things and execute all further documents necessary to give full effect to these Purchase Terms.
- (h) Any term of these Purchase Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable and the validity or enforceability of the remainder of these Purchase Terms is not affected.

## 18. Definitions

In these Purchase Terms, unless the contrary is expressly provided:

- (a) **Agreement** means a written agreement between the parties in respect of the same or similar subject matter as the Goods and/or Services in the Purchase Order which, by its nature, is intended to prevail over these Purchase Terms;
- (b) **Background Intellectual Property** means Intellectual Property owned or controlled by a party, including Intellectual Property developed prior to or independently of these Purchase Terms, which the party makes available for the carrying out of the Goods or Services;
- (c) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)), a day within the University Christmas shutdown between 24 December and 2 January, or Easter Tuesday.
- (d) **Confidential Information** means information that:
  - (i) is by its nature confidential;

- (ii) is designated by the Disclosing Party as confidential; or
- (iii) the Receiving Party knows or ought to know is confidential;

and includes, without limitation, all information about the University, its employees, students, agents, research, property, policies and operations which is made available or which becomes known during the term or as a result of the provision of the Goods and Services, but does not include information which is or becomes:

- (iv) available to the public at or after the date of its disclosure to the Receiving Party other than through the default of the Receiving Party;
- (v) properly in the possession of the Receiving Party other than by prior confidential disclosure from the Disclosing Party;
- (vi) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge or such information which is the subject of the disclosure;

- (e) **Disclosing Party** means the party that is disclosing Confidential Information;
- (f) **Goods and Services** means each of the goods and/or services (as applicable) to be provided pursuant to and as identified in the Purchase Order, and Goods and Services have their respective meanings;
- (g) **Health Information** has the meaning given to that term under the *Health Records Act 2001* (Vic);
- (h) **Hazardous Substances** has the meaning given to that term under the *Occupational Health and Safety Regulations 2007* (Vic);
- (i) **Insolvency Event** means in relation to a party:
  - (i) an application or order is made for its winding up or dissolution, or the appointment of a provisional liquidator to it;
  - (ii) it becomes bankrupt or insolvent;
  - (iii) a manager or receiver is appointed over any material part of its assets;
  - (iv) it enters into any arrangement, competition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  - (v) it is or becomes unable to pay its debts when they are due or is unable to pay its debts within the meaning of applicable law; or
  - (vi) having regard to its structure and the jurisdiction in which it was formed and operates, an event equivalent to any of the events described in paragraphs (i) to (v) occurs in relation to it;
- (j) **Intellectual Property** means all rights resulting from intellectual activity whether capable of protection by state, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests;
- (k) **Modern Slavery** means modern slavery as defined under the *Modern Slavery Act 2018* (Cth), and any other analogous anti-modern slavery laws or regulations in force in Victoria, Australia;
- (l) **Moral Rights** has the meaning given to that term under the *Copyright Act 1968* (Cth).
- (m) **Personal Information** has the meaning given to that term under the *Privacy and Data Protection Act 2014* (Vic);
- (n) **Purchase Order** means the purchase order issued by the University to the Supplier and to which these terms and conditions apply;

- (o) **Purchase Terms** means these terms and conditions and the Purchase Order;
- (p) **Receiving Party** means the party that is receiving Confidential Information;
- (q) **Sensitive Information** has the meaning given to that term under the *Privacy and Data Protection Act 2014* (Vic);
- (r) **Supplier** means the supplier identified in the Purchase Order;
- (s) **Transaction Tax** means all applicable taxes (including GST or equivalent, such as VAT), sales taxes, levies, duties, charges, deductions and withholdings and similar amounts imposed by law or by any government agency, other than amounts charged on net income; and
- (t) **University** means The University of Melbourne (ABN 84 002 705 224), a body politic and corporate under the *University of Melbourne Act 2009* (Vic) of Parkville, Victoria.

## 19. Interpretation

In these Purchase Terms, unless the contrary is expressly provided:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have the corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) headings are for convenience only and do not affect interpretation;
- (e) a reference to a party includes its agents, contractors, employees, invitees, officers, successors, transferees and assigns;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency, or other entity;
- (g) unless stated otherwise, a reference to A\$, \$A, dollar, or \$ is to Australian currency and a reference to time is to time in Melbourne, Victoria, Australia;
- (h) any word of limitation such as 'including', and any other similar expression, is to be read with the words 'but not limited to' immediately after;
- (i) if a day on, or by which, an obligation must be performed, or an event must occur, is not a business day, the obligation must be performed, or the event must occur on the next business day; and
- (j) no rule of interpretation may be applied to the disadvantage of a party if that party was responsible for drafting the Purchase Terms or clause.