

These terms and conditions apply to the provision of the Goods and Services by the Supplier to the University as set out in the Purchase Order and, if applicable, any Agreement. By supplying Goods and/or Services to the University pursuant to a Purchase Order the Supplier accepts these terms and conditions.

1. Goods and Services

The Supplier must provide the Goods and Services in accordance with these Purchase Terms (including the Purchase Order).

2. Delivery

- (a) The Goods and Services must be delivered to or performed at the site identified in the Purchase Order, by the date specified in (or if no time is specified as soon as practicable and in any event within a reasonable time) the Purchase Order. The University accepts no responsibility where the Supplier provides the Goods and Services to the wrong person or at the wrong site, or fails to properly identify and record the person receiving the Goods and Services.
- (b) Where Goods are provided pursuant to these Purchase Terms, clear, unencumbered and absolute title passes to the University on receipt of those Goods by the University.

3. Intellectual Property

- (a) Except as set out in paragraph (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, royalty-free and perpetual licence to use, modify and adapt any background intellectual property in or used to provide the Goods and Services.
- (c) 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 Services.

4. Warranties and Representations

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

- (a) it has full power, legal right and authority to enter into and perform its obligations under these Purchase Terms, and doing so will not put the Supplier into any position where there may be a conflict of interest;
- (b) it will perform its obligations under these Purchase Terms in accordance with the terms of these Purchase Terms and any reasonable instructions or directions of the University, and with all reasonable care, skill and diligence in a proper, professional, timely, cost effective and workmanlike manner;
- (c) for a period of 12 months after delivery (or as otherwise agreed), any 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;
- (d) it, and the Goods and Services, will not damage or destroy any part of the University's data, networks, systems, devices or computers, or introduce any viruses or similar programming effects into the same;
- (e) 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);
- (f) in providing the Goods and Services it will not be in breach of any obligation owed to any person and that it holds all licences and approvals necessary for or incidental to providing the Goods and Services; and
- (g) it will keep confidential, and ensure its employees, agents and approved sub-contractors keep confidential, all confidential information relating to the University, these Purchase Terms and the Goods and Services.

5. Termination

The University can terminate all or part of these Purchase Terms with immediate effect:

- (a) if any Goods or Services are provided other than in compliance with these Purchase Terms, including if they are not delivered or performed by the relevant date;
- (b) for convenience on 14 days' notice to the Supplier; or
- (c) where the Supplier:
 - (i) breaches any provision of these Purchase Terms and fails to remedy that breach within 7 days' notice (or the breach is irremediable); or
 - (ii) suffers an Insolvency Event.

Clauses 3(b), 4, 8, 9 and 10 survive the expiration or termination of these Purchase Terms. Where the Purchase Terms are terminated pursuant to this clause 5, the Supplier will perform all of its obligations up to the effective date of termination, and the University will be liable for the fees that are payable in respect of those obligations and incurred up to that date of 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 prior to the date of termination shall be refunded to the University on a pro-rata basis.

6. Compliance

The Supplier, and the Goods and Services, must comply with all and not cause the University to breach any relevant laws and University policies, including in relation to the environment, health, safety and security, and all privacy laws that bind the University (including in the same way and to the same extent those laws bind the University).

7. Payment Terms

- (a) The University is not obliged to pay any fees or expenses to the Supplier unless and until it is reasonably satisfied that the Supplier has provided or performed the Goods and Services in accordance with these Purchase Terms.
- (b) The University will pay all correctly rendered tax invoices within 30 days from the end of the month in which the invoice was received by the University.
- (c) The fees set out in the Purchase Order are fixed, inclusive of all taxes and other expenses or costs, the only amount the University is required to pay in relation to the Services or 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.
- (d) The University may withhold from payment any invoiced amount that it disputes in good faith until the dispute is resolved.
- (e) 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.
- (f) 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.

8. Indemnity and insurance

- (a) The Supplier indemnifies the University against all claims, demands, charges or expenses made against or incurred by the University and its employees and students as a result of any breach of these Purchase Terms by the Supplier, its employees, agents or authorised subcontractors, any wilful misconduct, or any negligent or fraudulent act or omission by the Supplier, its employees, agents or authorised subcontractors except to the extent to which such claims, demands or expenses are caused by or contributed to by the University.
- (b) Except where otherwise agreed in writing by the parties, the Supplier agrees to take out and maintain:
 - (i) public liability insurance to the amount of \$20,000,000; and
 - (ii) where the Supplier is providing professional Services of an advisory nature, professional indemnity insurance to the amount of \$5,000,000,to cover the performance of its obligations under these Purchase Terms and must provide written proof of maintenance of such insurance to the University on request.

9. Records and Audit

The Supplier must retain copies of all materials associated with the provision of the Goods and Services. The University is permitted to conduct a review of all materials held by the Supplier associated with the provision of the Goods and Services, in order to assess the Supplier's compliance with these Purchase Terms. The Supplier must provide all necessary assistance to facilitate the University's review of the materials.

10. Dispute Resolution

A party claiming that a dispute has arisen under these Purchase Terms (**Dispute**) must notify the other party giving written details of the Dispute. The parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each

party who are authorised to hear the Dispute before commencing any legal proceedings in relation to the Dispute. Nothing in this clause will prevent a party from seeking urgent interlocutory relief.

11. General

- (a) No variation of these Purchase Terms is effective unless made in writing and signed by each party.
 - (b) These Purchase Terms are governed by the laws of Victoria, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.
 - (c) Nothing in these Purchase Terms is intended to constitute a fiduciary relationship or an agency, partnership or trust, and neither party has authority to bind the other party. Supplier is responsible for its own employees, agents and authorised subcontractors and performs its obligations under these Purchase Terms at its own risk.
 - (d) Supplier must not assign or subcontract any part of these Purchase Terms.
 - (e) Each party must do all things and execute all further documents necessary to give full effect to these Purchase Terms.
 - (f) 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. The validity or enforceability of the remainder of these Purchase Terms is not affected.
 - (g) Where there is no Agreement, these Purchase Terms (including the Purchase Order) are the entire agreement between the parties about the subject matter and replace all previous agreements, understandings, representations and warranties about that subject matter.
 - (h) To the extent of any inconsistency, the higher of the following documents will prevail:
 - (i) any Agreement;
 - (ii) a Purchase Order;
 - (iii) these terms and conditions; and
 - (iv) any other document.
- (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.

12. 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 these Purchase Terms which, by its nature or as expressly stated, is intended to prevail over these Purchase Terms;
- (b) **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;
- (c) **Insolvency Event** means the Supplier becomes unable to pay its debts when they become due, enters into any arrangement between itself and its (or any class of its) creditors, ceases to carry on business, has a mortgagee enter into possession or dispose of the whole or any part of its assets or business, enters into liquidation or any form of insolvency administration, or has a receiver, receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business;
- (d) **Purchase Order** means the purchase order that incorporates these terms and conditions;
- (e) **Purchase Terms** means these terms and conditions and the Purchase Order;
- (f) **Supplier** means the supplier identified in the Purchase Order; and
- (g) **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.

13. 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;