



1 Application

- 1.1 These terms and conditions apply to the supply of goods or services as set out in a Purchase Order issued by the University.
- 1.2 These terms and conditions are additional to any terms and conditions (including any special conditions) set out in a Purchase Order.
- 1.3 If the University and the Supplier have separately agreed in writing to other University terms and conditions applying to a Purchase Order, those University terms and conditions will prevail over these terms and conditions to the extent of any inconsistency.
- 1.4 Where the Supplier issues an invoice or any other documentation which contains terms and conditions other than the terms and conditions contained in this Agreement, the Supplier issued terms and conditions will not be of any effect unless both parties accept the Supplier terms and conditions 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 acknowledging the Purchase Order in writing or delivering the goods or services described in the Purchase Order.
- 2.3 The Purchase Order, these terms and conditions, and any attachment to the Purchase Order expressly incorporated in writing will form a binding agreement between the Parties (**Agreement**).

3 Cancellation and Variation

- 3.1 The University may at any time before goods are delivered or services are performed vary or cancel a Purchase Order.
- 3.2 The University agrees to pay any reasonable costs or expenses incurred by the Supplier in reliance on a Purchase Order that is subsequently varied or cancelled by the University.
- 3.3 If a variation to a Purchase Order causes a change in the costs for supply of the goods and/or services or a change in the delivery time, the Supplier must notify the University immediately and not incur any further expense until the University has agreed to the change or cancels the Purchase Order.

4 Performance

- 4.1 The Supplier must supply the goods and/or services:
 - (a) in accordance with the Purchase Order;
 - (b) in a professional manner and in accordance with any generally accepted industry standards for the goods and/or services; and

- (c) in accordance with all applicable laws and regulations.

5 Delivery

- 5.1 The delivery time for the goods and/or services will be set out in the Purchase Order. Time is of the essence with respect to the Supplier's delivery obligations.
- 5.2 Property and risk in the goods will pass to the University on delivery to the University location specified in the Purchase Order.
- 5.3 Payment of any invoice by the University will not be deemed acceptance of any goods and/or services but is payment on account only.
- 5.4 The University may cancel the Purchase Order without penalty if the goods and/or services are not delivered by the specified time.

6 Warranties

- 6.1 The Supplier warrants that:
 - (a) it has all rights, title, interests and licences necessary to supply the goods and/or services under this Agreement;
 - (b) the Supplier and its personnel are suitably qualified, skilled and competent to supply the goods and/or services;
 - (c) the goods and/or services will be of a suitable quality, free from defects and fit for the purpose intended;
 - (d) the goods and/or services will meet any specification or performance criteria, and correspond with any sample;
 - (e) the University's use of the goods and/or services will not infringe the Intellectual Property Rights of any person; and
 - (f) it will supply accurate and up-to-date documentation associated with the good and/or services.
- 6.2 The warranties in clause 6.1 are in addition to any statutory warranties applicable to the goods and/or services.
- 6.3 During the Warranty Period:
 - (a) the University may give written notice to the Supplier of any failure or defect in the goods and/or services; and
 - (b) the Supplier must promptly correct any defect or failure notified by the University by repair, replacement, modification or other means acceptable to the University, at no cost to the University.



7 Compliance

- 7.1 The Supplier must comply with the University's [Supplier Code of Conduct](#) in performing its obligations under this Agreement.
- 7.2 If the Supplier is required to perform its obligations under this Agreement at any site owned or occupied by the University, the Supplier must:
- (a) observe the university's by-laws, rules and policies, which are available at www.westernsydney.edu.au; and
 - (b) comply with all reasonable directions of the University relating to health, safety and security.

8 Subcontracting

- 8.1 Except as expressly provided in the Purchase Order, the Supplier must not subcontract any of its obligations under this Agreement without the University's prior written consent.
- 8.2 If the Supplier subcontracts any of its obligations under this Agreement, the Supplier remains liable for carrying out and completing those obligations.

9 Fees and Payment

- 9.1 In consideration for the supply of goods and/or services under this Agreement, the University will pay the Supplier the amount set out in the Purchase Order (**Fees**).
- 9.2 All Fees are inclusive of GST unless the Purchase Order specifies otherwise.
- 9.3 Subject to clause 9.4, and unless otherwise specified in the Purchase Order, the University agrees to pay the Fees within 30 days of receipt of a valid tax invoice.
- 9.4 The University is under no obligation to pay any Fees until the goods or services to which those Fees relate are supplied in accordance with the requirements of this Agreement.

10 Intellectual Property Rights

- 10.1 Subject to clause 10.4, any Intellectual Property Rights created as a result of, or in connection with, the supply of goods or services under this Agreement will vest in and be owned by the University.
- 10.2 The Supplier will do all things necessary to ensure the University owns Intellectual Property Rights arising under this Agreement, including executing all documents required to transfer or assign ownership to the University.
- 10.3 The Supplier must also procure for the University's benefit any moral rights waivers or consents to enable the University to make full use of the goods or services as owner.
- 10.4 Any Background Intellectual Property will remain with the contributing party and will not be

transferred as a result of its use in the supply of goods or services.

- 10.5 The Supplier grants to the University a perpetual, irrevocable, royalty-free, worldwide non-exclusive licence to use, reproduce, modify, publish, adapt, communicate and exploit the Supplier's Background Intellectual Property for the use of the goods or services.

11 Confidentiality

- 11.1 Each party must keep any Confidential Information disclosed to it confidential and must take reasonable steps to ensure its security. This obligation of confidentiality survives termination of this Agreement.
- 11.2 The obligation in clause 11.1 does not apply to disclosure:
- (a) where required by law (including under the Government Information (Public Access) Act 2009); and
 - (b) to a party's officers or employees who need to know the information for the purposes of the Agreement and have been directed to keep the information confidential.

12 Privacy and Data Protection

- 12.1 Each party must comply with all applicable privacy laws in the performance of this Agreement.
- 12.2 If the Supplier handles Data on behalf of the University under this Agreement, the Supplier must:
- (a) only use the Data for the purpose of performing its obligations under this Agreement;
 - (b) not transfer Data outside Australia without the University's prior written consent;
 - (c) take reasonable and prudent measures to ensure that Data is protected from unauthorised access or damage; and
 - (d) implement and maintain effective systems, controls and other measures (including data protection plans) that comply with all relevant laws and meet accepted industry standards for data security and integrity.
- 12.3 The Supplier must notify the University immediately of any Data Threat (including providing all relevant details) and comply with the University's reasonable directions with respect to protection of Data and minimising the impact of the Data Threat.



13 Liability and Indemnity

- 13.1 The Supplier indemnifies the University against any Loss that the University sustains or incurs as a result of:
- (a) the Supplier's breach of this Agreement;
 - (b) the Supplier's negligence or willful misconduct; or
 - (c) any fraud, criminal conduct, or breach of any law or regulatory requirement by the Supplier,
- except to the extent that the University caused or contributed to the relevant Loss.
- 13.2 Neither party is liable to the other for Consequential Loss under any circumstances.

14 Insurance

- 14.1 The Supplier must hold and maintain:
- (a) all insurances the Supplier is required to hold by law (including worker's compensation insurance);
 - (b) public and product liability insurance to the value of no less than \$20 million; and
 - (c) if specified in the Purchase Order, professional indemnity insurance to the value of no less than \$10 million.
- 14.2 The Supplier must provide evidence of the currency of its insurance policies to the University on request.
- 14.3 The Supplier must ensure that any of its subcontractors comply with these insurance requirements.

15 Assignment

- 15.1 A party may only assign or novate its rights and obligations under this Agreement with the other party's prior written consent.

16 Termination

- 16.1 The University may terminate this Agreement by providing written notice to the Supplier if the Supplier:
- (a) breaches a term of this Agreement and fails to remedy that breach within 14 days after receiving written notice requiring it to do so;
 - (b) breaches a material term of this Agreement which is not capable of remedy.
- 16.2 Either party may terminate this Agreement on written notice if the other party suffers an Insolvency Event.
- 16.3 On termination or expiry of this Agreement, a party must comply with any reasonable request of the other party to return any Confidential Information of the requesting party.

- 16.4 Any accrued rights or remedies of a party remain unaffected by termination or expiry of this Agreement.

17 Disputes

- 17.1 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 of that notification to resolve the dispute; and
 - (c) discussions to resolve the dispute will be without prejudice.
- 17.2 If no agreement is reached by the senior representatives within 10 days, a party may commence legal proceedings.
- 17.3 During a dispute, each party must continue to perform its obligations under this Agreement.
- 17.4 This clause does not prevent a party seeking urgent or injunctive relief.

18 Conflicts of Interest

- 18.1 The Supplier warrants that, as at the date of this Agreement, it is not aware of any actual or potential conflict of interest in relation to the supply of goods or services under this Agreement.

19 General

- 19.1 **GIPA:** The Supplier acknowledges that the University is subject to the Government Information (Public Access) Act 2009 (NSW). The University may publish details of this Agreement as required under that Act.
- 19.2 **Notices:** A notice given by one party to the other under this Agreement must be in writing and sent to the address of the other party set out in the Purchase Order.
- 19.3 **Governing law:** This Agreement is governed by the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- 19.4 **No agency:** This Agreement is not intended to create any relationship of partnership, agency or joint venture between the parties.
- 19.5 **Waiver:** A waiver of any right arising under this Agreement must be in writing and executed by the party granting the waiver. A failure or delay in exercising a right under this Agreement does not result in a waiver of that right.
- 19.6 **Severability:** If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, that provision is severed and the Agreement will otherwise remain in full force and effect.

- 19.7 **Non-exclusive:** The Supplier acknowledges that the supply under this Agreement is non-exclusive, and the University retains the right to obtain supply of the goods or services from other persons.
- 19.8 **Variation:** these terms and conditions can only be varied in writing signed by both parties.
- 19.9 **Counterparts:** This Agreement may be executed by exchange of signed counterparts.

20 Definitions and Interpretation

- 20.1 In this Agreement:

Background Intellectual Property means the Intellectual Property Rights of either the Supplier or the University which existed prior to the date of this Agreement.

Confidential Information means all information which is by its nature confidential, designated by a party as confidential or disclosed in circumstances where the recipient ought to be aware the information is confidential, but does not include information that is or becomes public knowledge other than because of a breach of this Agreement.

Consequential Loss means consequential, special, indirect, punitive or exemplary loss or damage including without limitation pure economic loss, loss of profits and loss of opportunity or expectation.

Data means any data or information organised or formatted in a manner capable of being communicated and includes without limitation Confidential Information and Personal Information.

Data Threat means any actual or suspected threat to the security or integrity of any Data or University systems of any kind or by any means including, without limitation, unauthorised access or corruption of data.

Insolvency Event means the occurrence of any of the following events:

- (a) a party is unable to pay its debts when they become due;
- (b) a party comes under a form of external administration;
- (c) proceedings are initiated to wind up a party;
- (d) a party resolves to wind itself up, or notifies of an intention to do so;
- (e) a receiver, liquidator or administrator is appointed to a party; or
- (f) a party becomes bankrupt or enters into a scheme of arrangement with creditors.

Intellectual Property Rights means all intellectual property rights including patents, copyright, rights in circuit layouts, plant breeder's rights, registered

designs, trademarks and the right to have confidential information kept confidential and any application or right to apply for any of those rights.

Loss means any loss, liability, damage, fine, costs or other expense (including reasonable legal costs and expenses) and excludes Consequential Loss.

Personal Information means personal information as defined in the Personal Information Protection Act 1988 (NSW) and includes Health Information as defined in the Health Records and Information Privacy Act 2002 (NSW).

Purchase Order means the order for the goods or services issued by the University and accepted by the Supplier under clause 2.2.

Supply means the supply of goods or performance of services as set out in a Purchase Order.

- 20.2 In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the word 'includes' is not a word of limitation;
- (d) other grammatical forms of defined words and expressions have corresponding meanings;
- (e) a reference to a law includes any amendment or replacement of that law and includes any delegated legislation, regulations, codes or standards made under it;
- (f) a reference to a person includes a firm, body corporate, partnership, joint venture, association or authority;
- (g) a reference to a party includes that party's successors and permitted assignees;
- (h) a promise on the part of 2 or more persons binds them jointly and severally; and
- (i) no provision of the Agreement will be construed adversely to the University because the University was responsible for the preparation of this Agreement.