

Purchasing Terms and Conditions

UTS's general terms and conditions for the supply of goods and services

1. Application of these Purchasing Terms and Conditions

- (a) These Purchasing Terms and Conditions apply to any Purchase Order issued by UTS to the Supplier for the supply of Goods or Services.
- (b) These Purchasing Terms and Conditions do not apply if UTS and the Supplier have entered into a separate written agreement in relation to any Goods or Services, unless that agreement expressly states that these Purchasing Terms and Conditions apply.
- (c) All other terms and conditions, including any contained in the Supplier's invoices, quotes or other documents, are excluded.
- (d) To the extent of any inconsistency between these Purchasing Terms and Conditions and a Purchase Order, these Purchasing Terms and Conditions prevail unless the Purchase Order expressly states otherwise and is agreed in writing by UTS.

2. Formation of Contract

- (a) The Supplier may accept the Purchase Order by providing written confirmation to UTS or by supplying the Goods or Services or any part of them.
- (b) On acceptance, a contract is formed between UTS and the Supplier for the supply of the Goods and Services on these Purchasing Terms and Conditions together with the terms set out in the Purchase Order (**Contract**).

3. Term

The Contract commences on the date the Supplier accepts the Purchase Order (or on any later date specified in the Purchase Order) and continues until the Supplier has supplied the Goods and Services as required under the Contract, unless cancelled or terminated earlier in accordance with the terms of the Contract.

4. Supply of Goods and Services

- (a) The Supplier must supply the Goods and Services to UTS in accordance with the Contract, including the Specifications and any requirements specified in the Purchase Order.
- (b) The Supplier must deliver the Goods:
 - (i) to the location and by the date specified in the Purchase Order or if no date is specified, within a reasonable time; and
 - (ii) packed, marked and labelled for safe delivery to UTS and in accordance with any UTS instructions.
- (c) The Supplier must perform the Services:
 - (i) with due care, skill and diligence and in accordance with good industry practice;
 - (ii) using suitably qualified and experienced Personnel; and
 - (iii) by the dates or timeframes specified in the Purchase Order or if none are specified, within a reasonable time.
- (d) The Supplier must provide UTS with all documentation required for UTS to operate, fully utilise and maintain the Goods and Services, including manuals, instructions and warranties.
- (e) If the Supplier anticipates any delay in delivery of the Goods or performance of the Services, it must promptly notify UTS in writing, explaining the reason for the delay and proposing an alternative date or timeframe. UTS may accept the alternative date or timeframe or take any other action permitted under the Contract.

5. Access to UTS's premises

If the Supplier or its Personnel require access to UTS's premises to supply the Goods or Services, the Supplier must and must ensure that its Personnel:

- (a) access the premises only at times agreed with UTS;
- (b) comply with UTS's reasonable induction, safety and security requirements;
- (c) cooperate with UTS's Personnel and minimise disruption to UTS's operations;
- (d) take all reasonable steps to protect people and property on the premises; and
- (e) immediately notify UTS of any hazards, risks or incidents arising out of or in connection with the supply.

6. Subcontracting

- (a) The Supplier must not subcontract any of its obligations under the Contract without UTS's prior written approval and subject to compliance with the Contract.
- (b) The Supplier remains responsible for its subcontractors and liable for their acts and omissions as if they were its own.

7. Compliance

- (a) The Supplier must:
 - (i) obtain and maintain all licences and approvals required to supply the Goods and Services;
 - (ii) comply with all Laws, the UTS Supplier Code of Conduct and any other policies, codes and standards reasonably notified by UTS as applying to the Goods and Services; and
 - (iii) ensure that it and its Personnel comply with any reasonable directions given by UTS in relation to the supply of the Goods and Services.
- (b) If a conflict of interest arises or is likely to arise in relation to the supply of the Goods and Services, the Supplier must promptly notify UTS in writing and take all action reasonably required by UTS to avoid or manage the conflict.

8. Modern slavery

- (a) The Supplier must take all reasonable steps to identify, assess and address risks of modern slavery in its operations and supply chains used to supply the Goods and Services, including risks of slavery, forced labour, human trafficking and other exploitative practices.
- (b) If the Supplier becomes aware of any actual or suspected modern slavery practices in those operations and supply chains, it must promptly notify UTS in writing. The Supplier must also provide any information or assistance reasonably required by UTS to enable UTS to meet its legal obligations under applicable modern slavery Laws.

9. Defective Goods and Services

- (a) UTS may, acting reasonably, give written notice to the Supplier if any Goods or Services do not comply with the Specifications or any other requirements of the Contract, setting out the details of non-compliance.
- (b) Within five business days after receiving the notice of non-compliance (or as otherwise agreed), the Supplier must notify UTS in writing whether it accepts or disputes the notice and, if disputing, provide its reasons.
- (c) If the Supplier accepts the notice of non-compliance, fails to respond within that period or it is later determined that the Goods or Services are non-compliant, the Supplier must, at no additional cost to UTS and at UTS's election:
 - (i) repair, replace or re-supply the Goods or Services so that they comply with the Specifications and other Contract requirements; or
 - (ii) refund any amounts paid by UTS for the non-compliant Goods or Services.
- (d) UTS's rights under this clause 9 are in addition to any other rights available under the Contract or at Law, including during the Warranty Period.

10. Title and risk

- (a) Title to the Goods passes to UTS on delivery to UTS's premises or on full payment, whichever occurs first.
- (b) Risk in the Goods remains with the Supplier until delivery is completed at UTS's nominated premises.

11. Price and payment

- (a) Subject to the Supplier's supply of the Goods and Services in accordance with the Contract, UTS must pay the Supplier the Price. The Price includes all costs and expenses incurred by the Supplier and no further amounts are payable by UTS unless otherwise specified in the Purchase Order.
- (b) The Supplier may issue invoices to UTS for the Price at the times specified in the Purchase Order. If no such times are specified, the Supplier may invoice UTS after the Goods and Services have been supplied in accordance with the Contract.
- (c) UTS must pay the Supplier within 30 days of receipt of a correctly rendered invoice. An invoice is correctly rendered if it:
 - (i) claims only amounts properly due and payable under the Contract;
 - (ii) itemises the Goods and Services supplied in sufficient detail to allow UTS to verify the amounts, and separately identifies the GST exclusive amount, the GST component and the GST inclusive amount;
 - (iii) is a valid tax invoice in accordance with the GST Law;
 - (iv) includes the Purchase Order number provided by UTS, if available;
 - (v) is addressed and sent as specified in the Purchase Order; and
 - (vi) includes any supporting documentation reasonably requested by UTS.
- (d) The making of a payment is not an acknowledgment that the Goods and Services have been supplied in accordance with the Contract.
- (e) If UTS disputes any part of an invoice, UTS may withhold payment of the disputed amount until the dispute is resolved. In such case, UTS must promptly notify the Supplier in writing of the amount in dispute and the reasons for disputing it.
- (f) UTS may, on written notice to the Supplier, set off any amount payable by UTS to the Supplier against any amount payable by the Supplier to UTS under or in connection with the Contract.

12. Taxes

- (a) Except as expressly stated in the Purchase Order, the Price includes all taxes, duties and charges other than GST.
- (b) If GST applies, UTS will pay the GST in accordance with the GST Law.

13. Records and audit

- (a) The Supplier must maintain true and accurate records of its performance of the Contract in accordance with applicable Laws and relevant industry practices and standards.
- (b) On request, the Supplier must provide UTS or its nominee with reasonable access to these records for audits or inspection purposes relating to performance or compliance. This obligation applies for the term of the Contract and for six years following its expiry or termination.

14. Intellectual property

- (a) The Supplier retains ownership of all Intellectual Property Rights in the Deliverables. The Supplier grants to UTS a perpetual, royalty-free, worldwide, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, communicate and distribute the Deliverables for UTS's purposes.
- (b) If the Goods, Services or Deliverables incorporate, or require the use of, any material developed or owned by the Supplier independently of the Contract (**Existing Materials**), the Supplier retains ownership of those Existing Materials and grants to UTS a perpetual, royalty-free, worldwide, non-exclusive licence (including the right to

sublicence) to use the Existing Materials to the extent necessary for UTS to use, maintain, support, modify and adapt the Goods, Services and Deliverables for UTS's purposes.

(c) The Supplier must not include any third party Intellectual Property Rights in the Goods, Services or Deliverables unless, at no additional cost to UTS, it has secured for UTS a licence on terms no less favourable than those granted under clause 14(b).

(d) The Supplier must ensure that all authors of the Deliverables provide written moral rights consents permitting UTS to use, adapt, modify or otherwise deal with the Deliverables without infringing their moral rights.

15. Confidentiality

(a) Each party must keep the other party's Confidential Information confidential and only use it where required to exercise its rights or perform its obligations under the Contract.

(b) A party must not disclose the other party's Confidential Information except:

- (i) with the other party's prior written consent, provided the subsequent recipient is bound by confidentiality obligations equivalent to those in the Contract;
- (ii) to its Personnel and professional advisers where the disclosure is reasonably necessary in connection with the party's exercise of its rights or performance of its obligations under the Contract; or
- (iii) where required by any Laws, provided that the party gives the other party prior written notice to the extent lawful to do so.

(c) UTS retains ownership of all its data, which forms part of UTS's Confidential Information. The Supplier may use UTS's data only to the extent necessary to perform its obligations under the Contract or as otherwise approved by UTS in writing.

16. Privacy

If the Supplier has access to UTS's personal information under the Contract, it must:

- (a) use or disclose the information only to perform its obligations under the Contract;
- (b) not transfer or allow access to the information outside Australia without UTS's prior written consent;
- (c) take appropriate technical and organisational measures, consistent with accepted industry standards, to protect the information from unauthorised access, use or disclosure; and
- (d) notify UTS as soon as possible after becoming aware of any actual, alleged or suspected security incident involving the information.

17. Warranties

(a) The Supplier warrants that, during the Warranty Period:

- (i) the Goods and Services will:
 - (A) meet the Specifications and other requirements of the Contract; and
 - (B) be fit for the purpose for which they are supplied; and
- (ii) the Goods will be new and free from defects in design, materials, workmanship and, where applicable, installation. Any software and electronic Goods will be free from harmful code.

(b) The Supplier further warrants that:

- (i) neither the Supplier nor its Personnel has any conflict of interest in respect of its ability to perform its obligations under the Contract; and
- (ii) the supply of the Goods, Services and Deliverables, and their use by UTS as contemplated by the Contract, will comply with all Laws and will not infringe any third party rights, including Intellectual Property Rights.

(c) During the Warranty Period, the Supplier must, at no additional cost to UTS and without limiting UTS's other rights or remedies, promptly rectify, repair, replace or re-supply (as appropriate) any Goods, Services or Deliverables that do not comply with any of the applicable warranties. If the Supplier fails to do so within a

reasonable time, UTS may remedy the non-compliance and recover the reasonable costs from the Supplier as a debt due.

18. Indemnities

The Supplier indemnifies UTS and its Personnel against all Loss arising out of or in connection with:

- (a) any personal injury or death to any person, or damage to or loss of property, to the extent caused or contributed to by an act or omission of the Supplier or its Personnel;
- (b) any claim by a third party that the Goods, Services or Deliverables infringe any Intellectual Property Rights or moral rights;
- (c) any breach of the Supplier's or its Personnel's obligations under clauses 15 (Confidentiality) or 16 (Privacy); and
- (d) any fraud, recklessness or wilful misconduct by the Supplier or its Personnel.

19. Liability

(a) To the extent permitted by Laws, the aggregate liability of each party under or in connection with the Contract, whether in contract, tort (including negligence), statute, equity or otherwise, is limited to an amount equal to two times the total Price paid or payable under the Contract.

(b) The limitation in clause 19(a) does not apply to:

- (i) liability for personal injury, death or damage to property;
- (ii) breach of a third party's Intellectual Property Rights or moral rights;
- (iii) breach of confidentiality or privacy obligations; or
- (iv) fraud, recklessness or wilful misconduct.

(c) Neither party is liable to the other party for indirect or consequential loss (including loss of profit, revenue, business opportunities, goodwill or savings), except for Loss that arises naturally in the usual course of events from the breach or other act or omission giving rise to the liability.

(d) Each party's liability, including under any indemnity, is reduced proportionately to the extent caused or contributed by the other party or its Personnel.

(e) The Supplier's obligation to indemnify UTS and its Personnel against Loss under clause 18 is reduced to the extent the Loss arose due to a failure of UTS or its Personnel to take reasonable steps to mitigate the Loss.

(f) To the extent permitted by Laws, Part 4 of the *Civil Liability Act 2002* (NSW) and any equivalent statutory provisions in any other jurisdiction do not apply to the Contract.

20. Insurance

(a) The Supplier must hold and maintain:

- (i) workers' compensation insurance as required by Law;
- (ii) public liability insurance of at least \$10 million for any one occurrence;
- (iii) where applicable, product liability insurance of at least \$10 million for any one occurrence and in the annual aggregate; and
- (iv) if the Services involve professional services, professional indemnity insurance of at least \$5 million for any one claim and in the annual aggregate, maintained for the duration of the Contract and for at least seven years afterwards.

(b) Within 14 days of a request from UTS, the Supplier must provide a certificate of currency or other evidence that it holds the required insurance under the Contract.

21. Dispute resolution

(a) The parties agree to resolve any dispute arising under or in connection with the Contract in accordance with this clause 21 before commencing legal proceedings, unless urgent interlocutory relief is sought.

(b) Either party may give the other party written notice of the dispute, setting out details of the matter in dispute. Within five business days after receiving the notice (or as otherwise agreed), senior representatives of the parties must meet and use reasonable endeavours to resolve the dispute.

(c) If the dispute is not resolved within 20 business days after the notice is given (or any longer period agreed in writing), either party may commence legal proceedings.

(d) Despite any dispute, each party must continue to perform its obligations under the Contract as far as practicable.

22. Cancellation and suspension

(a) UTS may, acting reasonably, cancel or suspend the Contract at any time before the Goods are delivered or the Services are performed by giving written notice to the Supplier.

(b) If the cancellation or suspension is not due to any breach, failure or delay of the Supplier, the Supplier may invoice UTS for the direct, reasonable and substantiated costs necessarily incurred by the Supplier as a result of implementing the cancellation or suspension, excluding any allowance for profit, profit component or overheads and only to the extent those costs could not reasonably have been mitigated or avoided by the Supplier.

23. Termination

(a) UTS may terminate the Contract immediately by giving written notice to the Supplier if:

(i) the Supplier fails to deliver or install the Goods or perform the Services by the date or timeframe specified in the Contract (except to the extent the failure was caused or contributed to by UTS) and the failure materially affects UTS's operations;

(ii) the Supplier breaches any other term of the Contract and the breach is not capable of remedy or, if capable of remedy, the Supplier fails to remedy it within 10 business days after receiving written notice from UTS requiring it to be remedied; or

(iii) the Supplier becomes insolvent, bankrupt or enters into liquidation or administration, to the extent not prohibited by Law.

(b) If UTS terminates the Contract under clause 23(a), its sole liability is to pay for any Goods or Services supplied and accepted before the termination date, subject to substantiation by the Supplier and submission of a correctly rendered invoice.

(c) The Supplier may terminate the Contract immediately by giving written notice to UTS if UTS breaches a material term of the Contract and fails to remedy it within 10 business days after receiving written notice from the Supplier requiring it to be remedied.

24. Consequences of expiry or termination

(a) On the expiry or termination of the Contract, the Supplier must, at UTS's election, securely return or destroy UTS's Confidential Information, data, intellectual property and any property provided by UTS for the purposes of the Contract, except for any information the Supplier is required by Laws to retain.

(b) The expiry or termination of the Contract for any reason will not affect or extinguish the terms which expressly or by their nature are intended to survive, including clauses 13 to 21, 24 and 25.

25. General

(a) **Government information:** The Supplier acknowledges that UTS is subject to the *Government Information (Public Access) Act 2009* (NSW) and agrees that UTS may publish details of the Contract on its nominated website as required under that Act.

(b) **Publicity:** Neither party may make public statements about the Contract without the other party's prior written consent, except as required by Law. Neither party may use the other party's name, logo, trade marks or branding without the other party's prior written consent.

(c) **Notices:** Notices under the Contract must be in writing and sent to the addresses specified in the Purchase Order or as otherwise notified by the other party from time to time.

(d) **Relationship:** The Supplier is an independent contractor. Nothing in the Contract creates a partnership, employment relationship, joint venture or any other association between the parties.

- (e) **Variation:** Any change to the Contract must be agreed in writing and signed by authorised representatives of each party.
- (f) **Waiver:** A waiver of a right or remedy under the Contract is not effective unless it is in writing and signed by the party granting it.
- (g) **Assignment:** The Supplier must not assign or novate its obligations under the Contract without UTS's prior written consent.
- (h) **Severability:** Any term of the Contract 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 the Contract is not affected.
- (i) **Electronic execution:** The parties may execute the Contract electronically and in counterparts.
- (j) **Entire agreement:** The Contract is the entire agreement between the parties about its subject matter and replaces all previous agreements and understandings about that subject matter.
- (k) **Governing Law:** The Contract is governed by the Laws applicable in New South Wales. Each party submits to the exclusive jurisdiction of the courts of New South Wales and the courts entitled to hear appeals from those courts.

26. Definitions

In the Contract, unless the contrary intention appears:

Confidential Information means information that is by its nature confidential or relates to or comprises the financial, corporate or commercial information of any party or the affairs of a third party, but does not include information in the public domain, unless it came into the public domain due to a breach of confidentiality.

Deliverables means the materials, documents, data or information, in any form (including electronic), developed by or on behalf of the Supplier (if any) as part of or in connection with the supply of the Services, including any items described as Deliverables in the Purchase Order, but excluding UTS data.

Goods means the goods (if any) described in the Purchase Order, including all related items, components or ancillary materials required for, or reasonably incidental to, their proper use.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights, including copyright, patents, designs, circuit layout rights, trade marks and any other protected or related rights, whether registered or unregistered and existing worldwide, and any other rights to registration of such rights.

Laws means any legally binding statute, regulation, by-law, ordinance, subordinate legislation, directive or mandatory code or standard in force from time to time in any relevant jurisdiction, including the Commonwealth or any State, Territory or local government, and any applicable common law and rule or principle of equity.

Loss means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, claim, outgoing, fine or payment of any nature or kind.

Personnel means a party's employees, officers, agents, contractors and subcontractors.

Price means the amounts payable by UTS for any Goods or Services specified in the Purchase Order.

Purchase Order means any form of purchase order issued by UTS for the Goods and Services under or incorporating these Purchasing Terms and Conditions and includes any document attached to or expressly incorporated in that purchase order.

Services means the services (if any) described in the Purchase Order, including all ancillary services and any Deliverables required for, or reasonably incidental to, the proper performance or use of the services.

Specifications, in respect of a Good or Service, means:

- (a) the requirements for that Good or Service as set out or referenced in the Purchase Order, including agreed design, quality, functionality and performance standards;
- (b) any samples or demonstrations provided by the Supplier; and

(c) all published specifications for that Good or Service from the Supplier or any relevant third party manufacturer.

Supplier means the entity identified as such in the Purchase Order.

UTS means the University of Technology Sydney.

UTS Supplier Code of Conduct means UTS's 'Supplier Code of Conduct' available at www.uts.edu.au/supplier-code-of-conduct.

Warranty Period means one year from the date of delivery or installation for Goods or one year from the date of completion for Services, unless otherwise specified in the Purchase Order. For software, the Warranty Period is 90 days.

27. Interpretation

In the Contract, the following rules of interpretation apply unless the context indicates otherwise:

- (a) headings are for convenience only and do not affect the interpretation of the Contract;
- (b) the singular includes the plural and vice versa;
- (c) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (d) the words "such as", "including" and similar expressions are not words of limitation;
- (e) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a party includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to the Contract;
 - (v) a statute or other Law is a reference to that statute or other Law as amended, consolidated or replaced; and
 - (vi) a monetary amount is to Australian dollars unless otherwise specified;
- (f) if an act required under the Contract falls on a non-business day in New South Wales, it is to be performed on the next business day in New South Wales; and
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of the Contract.