

Standard Supply Terms and Conditions

TERMS OF CONTRACT

1. The Contract between the parties is made up of these Standard Terms and the relevant Customer Order. Where the parties have entered into a Further Agreement which is relevant and applicable to particular Deliverables, that Further Agreement will also form part of the Contract for those Deliverables.
2. If there is any inconsistency between the documents described at clause 1, the Further Agreement (if any) will take priority over the Customer Order and these Standard Terms, and the Customer Order will take priority over these Standard Terms. If there are matters covered under these terms and conditions which are not addressed in the Further Agreement or the relevant Customer Order, then these terms and conditions will supplement the Further Agreement and/or the Customer Order (as relevant) in respect of those terms.

TERM

3. The Contract has effect from the time that a Customer Order is placed with the University. Subject to early termination, the Contract remains in effect while the University has an open trade account for the Customer.

ORDERS AND DELIVERY

4. From time to time, the Customer may submit an order for goods or services to the University. Each order must be in writing and must specify the required Deliverables, the Delivery date, and relevant Delivery instructions. The University will advise the Customer: (a) whether it accepts or declines the order, or proposes amendments to the order details; and (b) the Price for the Deliverables. The Customer will confirm in writing whether it accepts the Price and any proposed amendments to the order details. An order will only constitute a "Customer Order" and be processed by the University once the order details are agreed in writing between the parties.
5. The University will use reasonable endeavours to Deliver the Deliverables to the place, in the manner and by the date(s) and time(s) in the Contract (or, where no Delivery date is specified, within a reasonable time). The University will promptly notify the Customer of any possible or actual delay in Delivery, or where the University is unable to satisfy a Customer Order in part or in full for any reason, and will notify the Customer of the revised anticipated Delivery date.
6. The University will use reasonable endeavours to deliver any Services in accordance with any specifications agreed between the parties and recorded in the relevant Customer Order.
7. The University will package any Goods in suitable materials to avoid damage in transit. Goods are deemed to be Delivered when they arrive at the Customer's address (as specified in the Customer Order or, if not specified, as recorded in the attached Customer Account Application form, or when the Goods are collected by the Customer from the University).
8. The Customer agrees to inspect the Deliverables and advise the University of any issues with the Deliverables, within 48 hours of Delivery.
9. The University warrants that it has title to the Goods. The University shall retain title to the Goods until all amounts owing to the University by the Customer in respect of the Goods are paid in full. Title in the Goods will only pass to the Customer once payment for such Goods has been made in full, unless payment is made in full before Delivery in which case title will pass to the Customer upon Delivery. Risk in the Goods passes to the Customer on Delivery.
10. The Customer grants the University a security interest in the Goods (and any proceeds of the Goods) as security for all amounts owing by the Customer to the University under the Contract or any other agreement. The Customer waives any right it may have to receive from the University a copy of any financing statement or verification statement that is registered, issued or received in relation to any Goods supplied under the Contract. The Customer will do all things reasonably requested by the University for the University to perfect its security interest as a purchase money security interest in the Goods including, if applicable, to register a financing statement on the Personal Property Securities Register. The Customer waives any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the Personal Property Securities Act 1999.

PRICE AND PAYMENT

11. Subject to Delivery of the Deliverables and the provision by the University of a valid tax invoice, the Customer will pay the University the Price in New Zealand dollars plus GST (if any). The University will send invoices to the Customer electronically, unless otherwise agreed.

12. Subject to clause 14, the Customer will pay the University by the 20th day of the month following the date of the University's invoice, or as otherwise specified in the Customer Order (which may require alternative payment arrangements, such as a deposit or full payment in advance of Delivery).
13. The Price excludes GST and related service costs (e.g freight of Goods) unless expressly provided in the Customer Order.
14. If the Customer disputes any amount in an invoice, that amount shall not become due and payable until the dispute is resolved, provided that the Customer notifies the University of the amount in dispute and the reason for the dispute as soon as practicable and at the latest within 10 days of the date of the invoice.
15. If the Customer fails to make payments in accordance with clause 12, and without limiting the University's rights under the Contract or at law, the University is entitled to: (a) charge the Customer default interest (calculated daily) on the amount due and payable, from the date that payment is due to the date that payment is received; (b) charge the Customer for debt recovery costs incurred by the University; and/or (c) discontinue its supply of Deliverables to the Customer. Default interest will be charged at the official cash rate (OCR) published by the Reserve Bank of New Zealand for the month in which the default occurs plus two percent, (OCR+2%).

WARRANTIES, INDEMNITY AND LIABILITY

16. The parties agree that: (a) unless expressly agreed otherwise in the Customer Order, the Deliverables are required by the Customer for business purposes and are supplied and acquired in trade, and to the extent permitted by law, the Consumer Guarantees Act 1993 does not apply to the supply made under the Contract; and (b) all representations and warranties (whether statutory, express or implied), except any which may not lawfully be excluded or which are otherwise specifically agreed in the Customer Order, are expressly excluded.
17. The Customer indemnifies the University for any and all damages, losses, demands, proceedings, claims, and costs that the University suffers or incurs in connection with any breach of the Contract by the Customer, or any negligent or wrongful act or omission of the Customer in connection with the Contract, except to the extent that the damages, losses or costs arise as a result of an act or omission of the University.
18. The University's liability to the Customer:
 - a) in respect of defective Deliverables, is limited to repairing, replacing or refunding the Price of the defective Goods, or redelivering or refunding the Price of the defective Services; or
 - b) in respect of any other liability, is limited to the total amount paid by the Customer to the University pursuant to the Contract in the 12 months immediately preceding the event giving rise to the liability.

CONFIDENTIAL INFORMATION

19. Subject to clause 21, all Confidential Information provided by either party (Party A) to the other (Party B) shall remain the property of Party A and is to be treated as confidential and only used by Party B for the purposes of fulfilling its obligations under the Contract. This clause survives the term of the Contract.
20. On termination or expiry of the Contract, each party agrees to return Confidential Information to the other person on request (subject to any applicable legislative obligations which require the party to retain a copy of such Confidential Information).
21. Clause 19 in no way limits the personal information provisions in the attached Customer Account Application form.

INTELLECTUAL PROPERTY

22. All Intellectual Property owned by either party and existing prior to the Contract shall remain the exclusive property of that party. Any Intellectual Property created by the University in connection with the Contract shall be the exclusive property of the University. If the University is permitted by the Customer to use the Customer's Intellectual Property, the University may only use it for the purposes of fulfilling its obligations under the Contract.

HEALTH AND SAFETY

23. Each party acknowledges its obligations under the Health and Safety at Work Act 2015. To the extent the University and the Customer have overlapping health and safety duties, the parties will consult, co-operate and co-ordinate their activities so far as reasonably practicable.
24. If any University worker is required to attend the Customer's premises, the Customer must take all reasonably practicable steps to ensure the safety of that worker while on the Customer's premises (including by providing a health and safety induction if relevant), and the University will require that worker to comply with reasonable health and safety directions issued by the Customer. The Customer acknowledges that the University is relying on the Customer to ensure the health and safety of any University worker on the Customer's premises.

TERMINATION

25. Either party (Party A) may terminate the Contract immediately by notice to the other party (Party B), and may cancel any outstanding Customer Order, if Party B: (a) is in breach of the Contract, and that breach is either not capable of remedy or has not been remedied within 10 days of notice of the breach; or (b) is or becomes insolvent or bankrupt, goes into receivership or liquidation, or suffers any analogous event; or (c) assigns or

novates its rights and obligations under the Contract (including by way of a change of control) without Party A's consent.

26. Either party may terminate the Contract for any reason on one month's written notice to the other party. If the Client elects to terminate the Contract under this clause 26, the Client must pay the University for any costs incurred by the University prior to termination in connection with the supply of the Deliverables.

GENERAL

27. The Customer and the University are independent parties and this Contract does not create any agency, partnership, joint venture or employment relationship between them.
28. The Contract represents all of the terms and conditions that govern the supply of the Deliverables, and supersedes all previous agreements, communications, arrangements and understandings between the parties (whether written or oral) relating to the Deliverables. Other than pursuant to a Customer Order and any Further Agreement, no amendment or additional terms are binding on the parties unless otherwise agreed in writing.
29. The University may update these Standard Terms from time to time. If the University intends that any such change will apply to the Contract between the University and the Customer, it will notify the Customer. If the Customer does not agree to the change, the Customer will notify the University. If the parties are unable to reach agreement regarding the change, either party is entitled to terminate the Contract on one month's notice, and during the notice period the changes to the Standard Terms will not apply to the Contract.
30. The University shall not be responsible for any delay or failure to Deliver the Deliverables, nor shall the Customer be responsible for failure to receive the Deliverables, due to an extraordinary event or circumstance beyond their reasonable control such as an act of God (e.g. earthquake, volcano, epidemic), fire, flood, strike or other industrial action, terrorism, war, riot or civil commotion ("**Force Majeure Event**"), provided that the affected party informs the other party of, and takes reasonable steps to mitigate the effect of, the Force Majeure Event. If the Force Majeure Event is not remedied within 40 days, the other party may cancel any affected orders.
31. If any dispute between the Customer and the University arises they will endeavour to resolve the dispute promptly by negotiation.
32. The remedies provided in this Contract are cumulative and additional to any other remedies provided at law.
33. A waiver of any right under the Contract is ineffective unless it is in writing.
34. If any provision of the Contract is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable.
35. This Contract is governed by New Zealand law. The United Nations Convention on Contracts for the International Sale of Goods (1980) does not apply to this Contract.

DEFINITIONS

"**Confidential Information**" includes the terms of the Contract, information marked as confidential, and information that would reasonably be considered to be confidential, but not information that is public knowledge or that is required by law to be disclosed (including under the Official Information Act 1982).

"**Contract**" means the contract between the University and the Customer, the terms of which are set out in the Standard Terms, the Customer Order, and (where relevant) any Further Agreement.

"**Customer**" means the person, partnership, trust, company, Government department or Crown entity named as the Customer in the attached Customer Account Application form.

"**Customer Order**" means the order placed by the Customer with the University for the Deliverables (which may, but is not required to, be by way of a formal purchase order), and which has been accepted by the University or otherwise negotiated and agreed in accordance with clause 4 of these Standard Terms.

"**Deliverables**" means the Goods and/or Services.

"**Delivery**" means the delivery of the Goods and/or the provision of the Services (as applicable) in accordance with the Contract and "**Deliver**" has a corresponding meaning.

"**Further Agreement**" refers to any other agreement that is entered into by the parties, for the supply of goods and/or services by the University to the Customer, on terms that are specific to the supply of those goods and/or services. One or more Further Agreements may be entered into by the parties from time to time.

"**Goods**" means the goods, materials or substances specified in the Customer Order and all related parts or components.

"**Intellectual Property**" means all intellectual property and proprietary rights including all patents, trademarks, service marks, copyright, designs, drawings, formulae, technical specifications, methods, inventions (whether patentable or not), discoveries, know-how, concepts, and trade secrets (and whether registered or unregistered).

"**Price**" means the price or fee for the Deliverables specified in the Customer Order, or, if no price or fee is specified in the Customer Order, the price or fee set out in the invoice issued by the University to the Customer.

"**Services**" means the services specified in the Customer Order.

"**Standard Terms**" means these standard supply terms and conditions.

"**University**" means the University of Auckland.