

## THE UNIVERSITY OF AUCKLAND - TERMS AND CONDITIONS OF PURCHASE

### 1. DEFINITIONS

- 1.1 In these Terms, in addition to terms already defined in other clauses, the following terms have the following meanings:
- "Confidential Information"** means information relating to business affairs, including research materials, trade secrets, know-how (including drawings, patterns, gauges, samples, and specifications) and the fact that the Contract or Order exists.
- "Contract"** means a purchase agreement made by the acceptance of an Order and includes these terms of purchase and any other terms which the parties have agreed in writing will apply to the Products and/or Services.
- "Consents"** means all permissions, consents, approvals, certificates, permits, licenses (including, to avoid doubt, licenses of Intellectual Property Rights), agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision and receipt of the Products and/or Services.
- "Delivery"** in the case of Products, means the delivery of the Products in good order and condition to a location nominated by the University, and in the case of Services means the completion of the Services to the University's satisfaction (acting reasonably) at a location nominated by such. **"Deliver"** has a corresponding meaning.
- "Encumbrance"** means a security agreement, debenture, mortgage, charge, pledge, lien, title retention, option, right of first refusal, right of pre-emption, any "security interest" as that term is defined in the Personal Property Securities Act 1999 and any other third party interest of any kind.
- "Intellectual Property Rights"** includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing.
- "Order"** means a University purchase which may be placed from time to time containing a reference to these Terms.
- "Products"** means the goods specified in the Order and all parts or components of those goods and includes any incidental services provided in relation to those products.
- "Services"** means the services to be carried out by the Supplier as specified in the Order.
- "Supplier"** means the vendor or supplier to whom the Order is issued.
- "Terms"** means these terms and conditions of purchase.
- "University"** means the University of Auckland.
- "University Premises"** means any land and/or building owned, leased, or otherwise occupied by the University.
- "You"** and **"Your"** means the Supplier.

- 1.2 In these Terms, unless the context otherwise requires:
- a statute or other law includes regulations, bylaws, orders-in-council, plans and other instruments under it and consolidations, amendments, re-enactments as replacement of any of them;
  - a gender includes each other gender;
  - the singular includes the plural and vice versa;
  - an agreement or instrument includes that agreement or instrument as modified, supplemented, novated or substituted from time to time; and
  - headings appear as a matter of convenience only and will not affect the interpretation of the Contract.

### 2. FORMATION OF THE CONTRACT

- 2.1 Orders may be placed by any Faculty, Department or other branch or agency of the University through the Shared Transaction Centre ("**STC**"). In all such cases the University is the principal contracting party and is solely responsible for the obligations arising on the acceptance of the Order.
- 2.2 The Order is liable to cancellation unless accepted by the Supplier's written acknowledgment or delivery within 10 working days of the date of the Order.
- 2.3 These Terms shall apply to the purchase of all Products and/or Services by the University pursuant to a purchase Order and shall prevail over any other terms and conditions asserted by or on behalf of the Supplier or any other person in respect of such supply. The Supplier agrees that if the University makes an Order with the Supplier which the Supplier accepts, these Terms will apply to that Order, even where the Supplier has proposed alternative terms to the University. To the extent of any conflict between the Supplier's terms of supply and these Terms, these Terms will prevail unless the University expressly agrees otherwise in writing.
- 2.4 If there is any inconsistency between any of the following documents, the inconsistency will be resolved using the following descending order of precedence unless otherwise agreed by the parties in writing:
- the terms set out in an express purchase agreement in place between the University and the Supplier;
  - the express terms of an Order; and
  - these Terms.

### 3. QUANTITY FORECASTS

- 3.1 The University may provide the Supplier with a forecast of its indicative requirements for Products or Services. Any forecast provided by the University under this clause is a good faith estimate only and will not be binding on the University. The University will endeavour to advise the Supplier of substantial changes from forecasted requirements.

#### 4. MARKING OF PRODUCTS

- 4.1 The Supplier must Deliver the Products and/or Services conforming to the specifications on or from the delivery date at the address specified in the Order (or any other delivery address notified by the University), unless otherwise agreed between the parties. The Supplier will take all necessary steps to mitigate a delay in delivery, the effects of such a delay, and the duration of such a delay. The Supplier must immediately notify the University of any actual or anticipated delay in delivery.
- 4.2 On Delivery and as a pre-requisite to the University accepting delivery and making payment, the Products or associated packaging must:
- (a) be marked on the packaging or as otherwise required with a correct trade description (including the nature and origin of the goods) and/or care instructions;
  - (b) be marked with or otherwise include any required branding, labels, trade name, or other identifier specified in an applicable Order;
  - (c) clearly indicate any substances in the Products which may be released during the handling, installation, use or disposal of the Products which are or may be hazardous to human health, animal health or the environment by clearly marking those Products and by including appropriate and prominent precautions in documentation accompanying the Products;
  - (d) be marked with the University's purchase order numbers and any part numbers on all invoices, packing slips, advice notes, statements, correspondence; and
  - (e) be marked with bar codes and other identifying information on the Products and packages and packaging for the Products, as required by the University.

#### 5. PACKING AND DELIVERY

- 5.1 The Supplier must have a valid purchase order number before it supplies Products to the University. Products supplied against an invalid purchase order number or without packing slips marked with the valid purchase order number will be returned at the Supplier's expense.
- 5.2 The Supplier will adequately pack and protect the Product against damage and deterioration and the Supplier must Deliver the Product not later than the time/s specified in the order. If no date of Delivery is specified in the Order, the Supplier will Deliver the Products to the University in a reasonable timeframe following the date the purchase order number is issued by the University to the Supplier. Time will be of the essence.
- 5.3 The University accepts no responsibility for the Delivery of the Products (unless otherwise agreed) nor for packing materials or cases.

#### 6. PASSING OF TITLE AND RISK

- 6.1 Risk and title to the Products will remain with the Supplier until the Products have been Delivered to the University when title and risk will pass to the University.

#### 7. TERMS OF PAYMENT AND INVOICING

- 7.1 **Price:** Unless otherwise agreed in writing, the Price for the Products and Services includes all costs of manufacture, delivery, packaging and transportation, insurance, labour and all applicable taxes (including GST). No other charges will be payable by the University to the Supplier for the Products and/or Services.
- 7.2 **Invoice:** The Supplier may issue an invoice each month for the Price for Products and/or Services supplied in accordance with these Terms. Each invoice must:
- (a) be emailed directly to [invoices@auckland.ac.nz](mailto:invoices@auckland.ac.nz);
  - (b) include the purchase order number (with the purchase order number to also be included on all other documents and articles relating to the Order);
  - (c) in the case of purchase of Products, describe in adequate detail the Products that are the subject of the invoice, the quantity of any Products supplied and the timing of provision of the Products;
  - (d) in the case of purchase of Services, describe in adequate detail the Services that are the subject of the invoice, and the timing of provision of the Services (including, where relevant, details of hours worked by the Supplier and any subcontractor(s) in the month);
  - (e) attach the freight receipt, if freight is prepaid in accordance with the Order;
  - (f) if the supply is subject to GST, be in the form of a valid tax invoice as defined in the Goods and Services Tax Act 1985; and
  - (g) show discounts on the face of the invoice.
- 7.3 **Payment:** The University will pay for the Products and/or Services by the 20th day of the month following delivery and receipt of invoice (unless otherwise agreed), provided that no material term of the Contract has been breached.
- 7.4 **Disputed invoice:** If any item or part of any item in an invoice issued under clause 7.2 is disputed, the University shall notify the Supplier as promptly as possible specifying the item disputed, the reason for the dispute and the amount that the University considers is the appropriate amount which should have been charged. The parties will discuss in good faith with a view to agreeing the appropriate amount payable.

#### 8. WARRANTIES

- 8.1 **Supplier Warranties:** In addition to all other warranties, conditions or other terms expressed or implied by law or

otherwise, the Supplier warrants to the University and to any purchaser of the Products or Services from the University that the Supplier:

- (a) has full capacity and authority and all necessary Consents to Deliver the Products and/or provide the Services under and in a manner contemplated by these Terms; and
- (b) will ensure clear title to anything supplied by the Supplier to the University will pass on Delivery, and be free of any security interest, lien, or other Encumbrance.

8.2 **Product Warranties:** The Supplier further warrants to the University and to any purchaser of the Products from the University that the Products:

- (a) will be provided in compliance with these Terms and the Order;
- (b) at the time of Delivery, will be new and unused (unless otherwise agreed by the University), of merchantable quality, and free from defects in design, material and workmanship;
- (c) are fit for use under all New Zealand conditions and laws and for all purposes for which they would ordinarily be required and any other particular purpose reasonably known to the Supplier or specifically made known to the Supplier;
- (d) the Products will comply with any agreed specifications, descriptions or samples, and any applicable statutory requirements;
- (e) will not infringe nor violate any Intellectual Property Rights and the University shall not be liable to any claim in that regard or for payment of any loss, damages, royalty, license or other monies in respect thereof;
- (f) will be Delivered within a reasonable time following the date that the purchase order number is issued by the University to the Supplier, where a specific time for Delivery is not specified in the Order; and
- (g) will be Delivered within the specified timeframe, where a specific time for Delivery is specified in the Order.

8.3 **Services Warranties:** The Supplier further warrants to the University that in performing the Services it will:

- (a) use appropriately experienced, qualified, skilled and trained personnel in performing any Services and provide the Services with all due skill, care and diligence in a timely manner;
- (b) provide the Services in a good, proper, efficient and workmanlike manner and in compliance with these Terms, all reasonable directions of the University in relation to the Services, and the timeframes and requirements set out in the Order;
- (c) ensure the performance of the Services for the University will not infringe the industrial or proprietary rights of any third party (including Intellectual Property Rights) and the University shall not be liable to any claim in that regard or for payment of any loss, damages, royalty, license or other monies in respect thereof;
- (d) provide, at its own cost, all personnel, equipment, tools, materials and other resources necessary for the provision of the Services;
- (e) not damage the reputation of the University or the goodwill of its customers, personnel, suppliers or stakeholders;
- (f) not damage or adversely affect the business operations or assets of the University;
- (g) not subcontract any third party to provide all or part of the Services unless the subcontractor and relevant subcontract have been approved by the University (acting reasonably);
- (h) minimise any disruption to the University business and the activities of the University personnel and any other service providers of the University; and
- (i) comply with all industry codes of practice, all relevant Consents and all policies of the University as notified to the Supplier from time to time.

8.4 **Third party warranties:** The Supplier will assign to the University, or if it is unable to do so, will hold for the sole benefit of the University, all warranties and guarantees provided by third parties to the Supplier in respect of the provision of Products and/or Services under these Terms.

## 9. DEFAULT AND CANCELLATION

9.1 If the Supplier breaches any of the warranties contained in clause 8 or in any Contract then, without limiting the University's other rights or remedies, the University may, at its sole discretion:

- (a) reject the Products and/or Services in whole or in part and return the Products to the Supplier at the Supplier's risk and expense and the Supplier must immediately reimburse the University for any monies paid in respect of the returned or rejected Products or Services; or
- (b) require the Supplier to replace, repair, reinstate or re-supply the Products or re-perform all or part of the Services at the Supplier's expense so the Products and/or Services conform to the Contract; or
- (c) arrange that the Products and/or Services be replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier.

9.2 The University may suspend payment for the Products and/or Services until the breach has been remedied. The University may set-off any amount the Supplier owes the University under the Contract, or on any account whatsoever against any amount which the University owes the Supplier under the Contract.

9.3 The University may cancel any Order on 30 days written notice if the Supplier has breached the Contract and failed to remedy the breach within seven working days after written notice has been given specifying the breach and requiring it to be remedied. Breach of any warranty by the Supplier can be treated by the University as breach of the Contract whether or not the University elects to accept the Products and/or Services.

9.4 Either party may cancel any Order immediately if the other party becomes bankrupt, ceases business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with creditors

under the Companies Act 1993.

- 9.5 The Supplier may terminate the Contract by notice to the University if there is a change in the University's policies and procedures referred to in clause 8.3(i) and 13.3(a) that detrimentally affects the Supplier's ability to provide the Products or Services or materially increases the costs of providing the Products or Services. Any termination notice under this clause must be issued within 20 working days of the Supplier being notified of the change
- 9.6 No failure or delay on the part of a party to exercise any of its right in respect of any default under the Contract by the other party will prejudice its rights in connection with that default or any subsequent default.
- 9.7 If the Order is cancelled the Supplier will return to the University all payments made. However, if upon cancellation the University elects to keep or take any Products it will pay for them but otherwise no compensation will be payable to the Supplier.
- 9.8 Cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect under the Contract.

## **10. INDEMNITY**

- 10.1 The Supplier will indemnify the University against any costs, losses, damages or liability arising out of the Supplier's negligence or other fault or breach by the Supplier, its employees, agents and subcontractors in the performance of or non-compliance with the Contract.

## **11. THE RELATIONSHIP BETWEEN THE SUPPLIER AND THE UNIVERSITY**

- 11.1 Nothing in these Terms should be interpreted as constituting either the University or the Supplier, an agent, partner or employee of the other and neither the Supplier nor the University may pledge the credit of the other not represented to anyone that:
  - (a) it is the other party;
  - (b) it is an agent, partner or employee of the other party; or
  - (c) it has any power or authority to incur any obligation of any nature on behalf of the other party.
- 11.2 The University's relationship with the Supplier is not exclusive. The Supplier is free to supply goods and services to other purchasers and the University is free to purchase goods and services (including goods or services equivalent to the Supplier's) from other suppliers.
- 11.3 The Supplier acknowledges that to the fullest extent permitted by law the terms of the Consumer Guarantees Act 1993 apply to this Contract.

## **12. CONFIDENTIALITY**

- 12.1 Each party acknowledges that it may receive Confidential Information of the other party and each party undertakes to the other that neither it nor its officers, employees, agents and/or subcontractors will divulge Confidential Information to others, without prior written consent of the other party, except to the extent necessary:
  - (a) to perform its obligations under the Contract; or
  - (b) for the University to promote, sell or service the Products; or
  - (c) to obtain professional advice in relation to the Contract; or
  - (d) to comply with disclosure obligations required by law.
- 12.2 All Confidential Information provided by the University will be and will remain the property of the University, and the Supplier must:
  - (a) use the Confidential Information only for the purpose of a Contract and/or Order; and
  - (b) return the Confidential Information to the University upon the University's request at any time or if no request is made, upon completion or termination of a Contract.

## **13. HEALTH AND SAFETY**

- 13.1 Each of the parties agrees to comply with its obligations under the Health and Safety at Work Act 2015 and all related legislation including all regulations and codes of practice approved under that Act (**Health and Safety Legislation**).
- 13.2 The Supplier will ensure that all Health and Safety Legislation is complied with by its respective subcontractors, employees and agents and any other person who is at the vicinity of any place where the Products are delivered and/or Services are carried out.
- 13.3 While on the University Premises the Supplier must:
  - (a) comply with all the University protocols, policies, codes of conduct and/or procedures (including, but not limited to the emergency evacuation policy, the health, safety and well-being policy, the smoke-free policy, the sustainability policy and the campus rules) available at <https://www.auckland.ac.nz/en/about/the-university/how-university-works/policy-and-administration.html>, as published and updated from time to time;
  - (b) do nothing that may jeopardise or invalidate licences and permits held by the University;
  - (c) comply with directions of the University security and designated building fire wardens at all times; and
  - (d) comply with any other directions of the University in relation to health and safety matters.

## **14. ASSIGNMENT AND SUB-CONTRACTING**

- 14.1 Neither party may assign or otherwise transfer any of the rights, benefits or obligations under the Contract, without the prior written consent of the other party.

14.2 The Supplier must not sub-contract or otherwise arrange for another person to discharge any of its obligations (excluding delivery) under the Contract without the prior written consent of the University. Notwithstanding the University's consent to sub-contract, the Supplier will remain fully responsible for all obligations to the University under the Contract.

**15. LAW**

15.1 The Contract is governed by New Zealand law. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same. The parties submit to the Courts of New Zealand in relation to any matter arising under an Agreement.

**16. NOTICES**

16.1 Any notice to be given under the Contract must be in writing and must be delivered or sent by post or email to the University or to the registered office or usual address of the Supplier.

16.2 The party to whom a notice is sent will be deemed to have received the notice:  
(a) if sent by post, 5 business days after it has been posted; or  
(b) if sent by email, on receipt of an email delivery confirmation.