

Terms and Conditions

1. General

a) These terms apply to all purchase orders (Orders) for goods and/or services (goods/services) placed by the University of New England (UNE) to a supplier (Supplier) and are in addition to any terms and/or conditions specified in an individual Order.

b) Where an Order is issued under the terms of a signed contract between UNE and the Supplier, or where UNE has accepted the Supplier's terms and conditions in writing (Approved Supplier Contract) then, in the event of any inconsistency between an Order and an Approved Supplier Contract, the Approved Supplier Contract will prevail to the extent of the inconsistency. No other terms or conditions or any variations apply to an Order by UNE unless UNE has agreed in writing to them.

c) For clarification to b) above, apart from an Approved Supplier Contract, these terms and conditions have precedence over any document provided by the Supplier to the UNE setting out terms and conditions for the supply of goods/services (including quotation) prior to or after UNE submitting an Order in respect to those goods/services.

2. The agreement

a) Supply of goods/services pursuant to an Order shall constitute acceptance of the terms of this agreement.

b) The Supplier may not transfer any of its rights or obligations under this agreement without the prior written consent of UNE.

c) The laws of New South Wales govern this agreement and the parties submit to the courts of New South Wales.

3. Waiver

A waiver of a breach of a term of this agreement shall not be taken to be a waiver in respect of any other breach. The failure of either party to enforce a term of this agreement will not be interpreted as a waiver of that term.

4. Price

All prices quoted in an Order are fixed and inclusive of all taxes, including GST, insurance, freight and delivery costs including costs associated with the return of goods wrongly supplied or defective goods.

5. Warranties

a) The Supplier warrants that it has the authority to enter into and perform its obligations under this agreement, that it has the ability to perform its obligations under this agreement, and that this agreement has been duly executed and is a legal, valid and binding agreement enforceable against it.

b) In relation to goods supplied under this agreement, the Supplier warrants that:

- (i) at the time ownership of the goods passes to UNE, they will be free from any security interests (under the Personal Property Securities Act 2009 (Cth)), charge or liability;
- (ii) the goods comply with all applicable standards, legislation, regulations and other governmental requirements in Australia, are fit for purpose, conform to the description of the goods purchased and are suitable for their intended purpose; and
- (iii) where the goods have been procured from third parties, the Supplier will do all things necessary to assign to UNE the benefit of any warranties given by the

third parties in addition to warranties offered by the Supplier under this agreement.

c) In relation to services supplied under this agreement, the Supplier:

- (i) warrants that the services do not infringe the Intellectual Property Rights or Moral Rights of any third party;
- (ii) warrants that it has procured (or will procure) any necessary Moral Rights consents to enable UNE to use any of the goods/services in accordance with this agreement;
- (iii) agrees to indemnify UNE in the event that any third party makes a claim on UNE in relation to any infringement of Intellectual Property Rights or Moral Rights by the Supplier; and
- (iv) warrants that the Supplier and all personnel engaged to supply the services are appropriately qualified, competent and experienced and hold all necessary licenses, permits and authorities.

6. Intellectual Property and Moral Rights

a) The Supplier assigns to UNE the Services Intellectual Property Rights, and must do all things reasonably required by UNE to enable UNE to assure further the rights, titles and interests assigned under this clause.

b) The Supplier grants to UNE a non-exclusive, perpetual, irrevocable, royalty-free, worldwide, fully paid-up, transferable licence (including the right to sub-licence) to use, reproduce, modify, adapt and communicate the Background Intellectual Property Rights for the purpose of UNE receiving the benefit of the services and exercising all of its rights in relation to the Services Intellectual Property Rights. To avoid doubt, the ownership of Background Intellectual Property Rights is not altered or transferred by its use in connection with this agreement.

c) In this agreement:

- (i) "Background Intellectual Property Rights" means the Intellectual Property Rights developed by the Supplier other than in the performance of the services the subject of this agreement;
- (ii) "Intellectual Property Rights" means all property in the nature of intellectual or industrial property including:
 - (A) patents, trademarks, service marks, rights in designs, rights to plant varieties, trade names, copyrights rights in circuit layouts, in each case whether registered or not, and any applications or rights to apply for registration of any of them, and any right to have confidential information kept confidential;
 - (B) rights under licences and consent in relation to any of them; and
 - (C) all forms of protection of a similar nature having equivalent or similar effect to any of them which may subsist anywhere in the world.
- (iii) "Services Intellectual Property" means all rights, title and interest (including Intellectual Property Rights throughout the world) arising from or in connection with the performance of the Services.
- (iv) "Moral Rights" and "Works" have the meaning attributed to those terms in the Copyright Act 1968 (Cth).

7. Confidentiality and Privacy

a) The Supplier acknowledges that information disclosed to it by UNE in connection with this agreement is confidential information.

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b) Except as stated in this agreement, the Supplier must not and must not permit any of its officers, employees, agents, contractors or related bodies corporate to use or to disclose to any person any information disclosed to it by UNE in connection with this agreement without the prior written consent of UNE.

c) This clause does not apply to any information which is generally available to the public (other than as a result of the wrongful disclosure by the Supplier), is developed by the Supplier without reference to the information disclosed by UNE, or is required to be disclosed by any applicable law.

d) In performing this agreement, the Supplier must comply with all applicable privacy laws.

8. Title and Delivery

a) Title to the goods/services vests in UNE upon acceptance and acceptance of the goods/services by UNE is subject to satisfactory inspection on delivery. The Supplier assumes all risk in the goods/services until UNE accepts them.

b) The Supplier will not (and will procure that any subcontractors will not) attempt to register any security interest or liens in respect of the goods and services supplied.

c) The Supplier must supply the goods/services on the date, time and place specified by UNE and time is of the essence.

d) The Supplier must ensure that all invoices, packing slips and other documents have an Order number, description and quantity of the goods, the name of the UNE representative. The goods must be packed for safe delivery to UNE. UNE will not accept the goods or pay for the goods unless the Order number is included in the documents issued by the Supplier.

e) Goods/services that do not comply in every respect with the description, specification and any samples submitted with the Order will not be accepted and the cost of storing, handling and returning any goods not accepted shall be borne by the Supplier.

9. Defective Goods/Services

a) The Supplier, at its own cost, shall remedy any defect in supplied goods/services that have been notified to it by UNE but if it fails to do so within 30 days of being so notified, UNE may arrange for the remedial work by a third party at the Supplier's expense or return the goods to the Supplier at the Supplier's expense and immediately be entitled to a full refund of the price of those goods.

b) The rights and remedies under this clause are in addition to, and do not limit, any other rights of UNE at law.

10. Payment

If the Supplier has supplied the goods/services in accordance with the Order, UNE has accepted the goods/services and the Supplier has issued a valid tax invoice substantiated by an itemised account and any further details reasonably requested by UNE, payment will be made 30 days after receipt of invoice or within such other time as has been agreed in writing by UNE.

11. Insurances

The Supplier must hold appropriate insurance including workers compensation and public liability insurance (and where specified by UNE, product liability and professional indemnity insurance) to cover the risk for the goods/services supplied and provide documentary evidence thereof to UNE on demand.

12. Access to Information under s. 121 of the GIPA Act

The Supplier acknowledges that UNE is required to comply with the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act). The Supplier will respond promptly to any request by UNE to the Supplier under the GIPA Act and the Supplier will

do all things reasonably required by UNE to enable UNE to meet its obligations under the GIPA Act.

13. Indemnity

The Supplier shall indemnify UNE, its employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor client basis) arising out of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Supplier in the performance of this agreement or any breach of this Agreement.

14. Termination

UNE may terminate this agreement:

a) if the Supplier becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of bankruptcy or insolvency administration;

b) if the Supplier commits a breach of an obligation or warranty under this agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of giving notice requiring it to do so from UNE; or

c) at any time for any reason by giving notice to the Supplier, in which case the Supplier shall stop supplying the goods or services under the agreement and take steps to mitigate losses. If UNE terminates this agreement under clause 13(c) then UNE shall, in total satisfaction of the liability of UNE to the Supplier in respect of this agreement and its termination:

(i) pay the Supplier for services properly completed to that date; and

(ii) reimburse the Supplier its unavoidable costs directly incurred as a result of termination, provided that any such claim is supported by written evidence of the costs claimed and considered acceptable by UNE (acting reasonably).

UNE shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Supplier as a result of the termination of this agreement by UNE.

15. Additional conditions for provision of onsite goods or services

Where Supplier is supplying goods/services onsite to UNE:

a) The Supplier acknowledges that it is granted access to UNE's premises only for it to fulfil its obligations under this agreement; and

b) The Supplier will comply with all reasonable directions given by UNE personnel in the event of an emergency or security breach or any other matter as it may arise..