

THESE TERMS AND CONDITIONS ARE NOT TO BE ALTERED WITHOUT THE WRITTEN APPROVAL OF THE UNIVERSITY'S LEGAL OFFICE
1 General

- 1.1** These Terms and Conditions apply to the order for goods (“**Goods**”) or services (“**Services**”) placed by Federation University Australia (“**University**”) on the supplier (“**Supplier**”) as described in the attached purchase order (“**Purchase Order**”).
- 1.2** They are to be read as in addition to any terms specified in the Purchase Order and/or any attachment to it that is expressly incorporated in writing. No other terms or conditions apply to this Purchase Order under any circumstances except where:
- the University first provides its agreement in writing; or
 - both parties enters into a longer form agreement in which case the terms of that agreement will apply between the parties.

2 Offer and Acceptance

- 2.1** The Supplier is taken to have accepted a Purchase Order if it notifies the University that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order. The Supplier’s duties are as designated by the Executive Dean of the Faculty/Director of a section or other person acting with the University’s authority.
- 2.2** If the Supplier is unable or unwilling to accept the Purchase Order, it must notify the University promptly. It may propose a variation to the Purchase Order, or offer other Goods and/or Services in substitution, but these must first be approved in writing by University before delivery.
- 2.3** The Purchase Order once accepted, combined with these Terms and Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties (“**Agreement**”).
- 2.4** This Agreement does not create, nor is it intended to create, an employment relationship or a relationship of principal and agent, nor shall it constitute a partnership. The Supplier is responsible for the payment of all taxes and superannuation of all its employees.

3 Cancellation and Changes

- 3.1** The University may at any time before delivery change or cancel the Purchase Order.
- 3.2** If the Supplier has already incurred expense in arranging for the order or delivery of the Goods and/or Services specified in the first Purchase Order, the University agrees to pay the Supplier’s reasonable direct costs or expenses incurred.

4 Delivery, Acceptance and Title

- 4.1** If not specified in the Purchase Order, time will be of the essence with respect to the Supplier’s delivery obligations under this Agreement. The time period for delivery to the University may be specified in the Purchase Order.
- 4.2** Payment of any invoice by the University will not be deemed acceptance of any Goods and/or Services, but rather such Goods and/or Services will be subject to a 3 month period of inspection, testing, acceptance or rejection by the University.
- 4.3** If the Goods are not of suitable quality they will be returned by the University to the Supplier at the Supplier’s expense.
- 4.4** Risk and title in the Goods will pass to the University when they are delivered to the University.

5 Sub-contracting

- 5.1** Except as expressly provided in the Purchase Order, the Supplier will not sub-contract any obligations under this Agreement without the prior written consent of the University.
- 5.2** Where the Supplier sub-contracts any of its obligations under this Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

6 Fees and Invoices

- 6.1** In consideration for the provision of Goods and/or Services under this Agreement, the University agrees to pay to the Supplier the fees specified in the Purchase Order (“**Fees**”). Subject to clause 6.3 the Fees include all taxes, costs and charges including freight and courier charges.
- 6.2** The Supplier must issue the University with a valid tax invoice for Goods and/or Services for which it requires payment. The tax invoice must:
- specify the Purchase Order number;
 - specify the date of delivery and address;
 - describe the Goods and/or Services delivered – including quantity;
 - specify bank account details for electronic payment; and
- 6.3** Unless otherwise specified in the Purchase Order, the University agrees to pay the Supplier the Fees within 30 days of receipt and acceptance of an invoice by the University.
- 6.4** If GST is payable in connection with the Goods and/or Services to be supplied under this Agreement, then the Supplier irrevocably warrants and agrees that the Fees payable to it under this Agreement and specified in the Purchase Order is the GST inclusive price of those Goods and/or Services unless otherwise agreed in the Purchase Order.

7 Indemnity, Insurance and Warranties

- 7.1** The Supplier indemnifies the University against all Losses it directly or indirectly sustains or incurs as a result of:
- a breach by the Supplier of these terms and conditions;
 - any negligent, unlawful or willful act or omission of the Supplier or Supplier personnel;
 - any infringement of the IPRs or moral rights of a third party arising out of the provision or use of the Goods and / or Services; or
 - any negligent acts or omissions of any subcontractor engaged by the Supplier,

except to the extent that any negligent act or omission of the University contributed to the Losses. The University has a duty to mitigate its Losses.

Losses means liabilities, losses, damages, actions, costs, expenses, charges, fees (including legal costs on a full indemnity basis) and outgoings of whatever description and consequential and indirect losses and damages including those arising out of a third party claim.

Intellectual Property Rights (IPRs) means all present and future rights conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

- 7.2** The Supplier and its subcontractors must have and maintain throughout the term of this Agreement Public and Products liability (\$20 million for each occurrence) and if applicable;
- Professional Indemnity Insurance (\$5 million for each occurrence); and/or
 - Workers’ compensation insurance for the Supplier’s employees.

If requested by the University the Supplier must provide the current certificates of currency.

8 Services

- 8.1** The Supplier represents and warrants that:
- it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;

- b) not presently have nor, during the term of the Agreement, have any conflicts of interest. The Supplier shall promptly notify the University of any actual or potential conflicts of interest;
- c) its personnel are suitably qualified, skilled, and competent to perform the Services;
- d) the Goods and/or Services will be fit for the purposes intended;
- e) any agreed design specifications and performance criteria correspond with any sample;
- f) the Goods and/or Services will be professionally delivered, complete, accurate and free from material faults in design and free from defects in materials, workmanship and installation;
- g) as far as it is aware it is entitled to licence any Intellectual Property Rights transferred to the University under this Agreement;
- h) the University's use of any Intellectual Property Rights in the Goods and/or Services will not infringe the Intellectual Property Rights of any person;
- i) it will supply to the University in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services;
- j) it will comply with all University policies, procedures and relevant legislation, downloadable at following website: <http://federation.edu.au/staff/policy-central>;
- k) all Goods are free from encumbrances and security interests; and
- l) all claims made regarding the sustainability of the Goods are documented and can be demonstrated on request.

8.2 The warranties in clause 8.1 are in addition to any statutory warranties applicable to the Goods and/or Services.

8.3 During the Warranty Period the University may give written notice to the Supplier of any failure or defect in the Goods and/or Services.

8.4 The Supplier must promptly correct any defect or failure notified by the Supplier during the Warranty Period at no cost to the University by repair, replacement, modification or other means acceptable to the University.

8.5 If the Supplier fails to correct any defect or failure of which it has been notified under this clause 8.4 within the time specified in the notice, the University has the right to rectify the defect or failure itself or have the rectification undertaken by a third party. All costs incurred constitute a debt due and payable by the Supplier to the University and may be deducted from moneys otherwise payable by the University to the Supplier.

8.6 Warranty Period means the period commencing on the date of supply of any Goods and/or Services to the University premises and lasting for a period of two years for Goods supplied and one year for Services, unless otherwise stated in the Purchase Order.

9 Intellectual Property Rights and Confidential Information

9.1 All rights, title and interest in any Intellectual Property Rights created in providing the Goods and/or Services (Project IPRs) will be owned by the University, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to the University.

9.2 The Intellectual Property Rights owned by a party prior to the date of this Agreement (Background IPRs) remain with the contributing party.

9.3 The Supplier grants to the University a permanent, irrevocable, royalty-free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt, or communicate to the public and exploit the Supplier's Background IPRs in conjunction with the Goods and/or Services, and the Project IPRs.

9.4 The parties must keep all Confidential Information absolutely confidential and each party undertakes that it will not

communicate, publish or release, or permit the communication, publication or release of any Confidential Information except:

- a) as is necessary for a party to perform its obligations under this Agreement; or
- b) as permitted or required by law.

Confidential Information means any information or data, including Personal Information as defined in the Privacy and Data Protection Act 2014 (Vic) and Health Information as defined in the Health Records Act 2001 (Vic), whether or not in a material form, which is confidential to a party including confidential information acquired, collected or developed for the purpose of this Agreement or obtained during the term of this Agreement, except that which is already in the public domain otherwise than as a result of a breach of this Agreement.

10 Miscellaneous

10.1 The University may terminate this Agreement by written notice to the Supplier:

- a) without cause on 14 days;
- b) if the Supplier breaches a term of this Agreement and fails to remedy the breach within 14 days of the notice; or
- c) immediately, if the Supplier is subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.

10.2 The University reserves the right to retain other persons or entities to supply the Goods and/or Services, including but not limited to any part of the Goods and/or Services.

10.3 The Supplier may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the University.

10.4 A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties intended to be bound. A failure of a party to exercise a right arising out of this Agreement does not constitute a waiver of that right.

10.5 Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), pandemics, epidemics, acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party.

10.6 If there is an inconsistency between a provision of:

- a) a longer term contract entered into between the Supplier and the University for the Goods and/or Services described under the Purchase Order;
 - b) these Terms and Conditions;
 - c) any terms and conditions added to the Purchase Order;
 - d) any annexures or attachments to the Purchase Order
- then the first-mentioned terms shall prevail in the order set out.

10.7 This Agreement is governed by the law in the State of Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts in the State of Victoria.