

1. Application of these Purchasing Terms and Conditions

- (a) These Purchasing Terms and Conditions apply to any Purchase Order issued by UTS for the supply of Goods or Services from the Supplier.
- (b) If UTS and the Supplier have entered into a separate written agreement for the Goods or Services, these Terms and Conditions do not apply unless that agreement expressly incorporates them.
- (c) All other terms and conditions, including any contained in the Supplier's invoices, quotes or other documents, are excluded.
- (d) In the event of any inconsistency between these Terms and Conditions and a Purchase Order, these 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 delivering the Goods or performing the Services.
- (b) Upon the Supplier's acceptance of the Purchase Order, a contract is formed between the Supplier and UTS for the supply of the Goods and Services on these Terms and Conditions and the terms specified in the Purchase Order (**Contract**).

3. Term of the Contract

The Contract commences when the Supplier accepts the Purchase Order in accordance with clause 2(a) or any such date specified in the Purchase Order. It continues until both parties have fulfilled their respective obligations under the Contract or it is cancelled or terminated in accordance with the Contract, whichever occurs first.

4. Supply of Goods and Services

- (a) The Supplier agrees to supply the Goods and Services to UTS in accordance with the timeframes, Specifications and requirements set out in the Contract, including those specified in the Purchase Order.
- (b) The Supplier must pack, mark and label the Goods to ensure safe delivery to UTS and in accordance with any specific instructions from UTS.
- (c) The Supplier must provide UTS with all necessary documentation, including manuals, instructions and warranties, required for UTS to operate, fully utilise and maintain the Goods and Services.
- (d) The Supplier must deliver the Goods and perform the Services by the dates and at the locations specified in the Purchase Order or, if no dates are specified, within a reasonable time.
- (e) If the Supplier anticipates any delay in delivery or performance, it must notify UTS in writing as soon as possible, providing reasons for the delay and proposing an alternative date for delivery or performance. UTS may accept the new date or take any other action permitted under the Contract.

5. Access to UTS's premises

If the Supplier's Personnel require access to UTS's premises, the Supplier 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) minimise disruption to UTS's operations;
- (d) take reasonable steps to protect people and property; and
- (e) immediately notify UTS of any hazards, risks or incidents.

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 is responsible for its subcontractors and liable for their acts and omissions as if they were the acts and omissions of the Supplier.

7. Compliance

(a) The Supplier must:

- (i) obtain all necessary licences and approvals required to deliver the Goods or perform the Services;
- (ii) comply with all applicable Laws, including those relating to work health and safety, hazardous materials, environmental protection and privacy; and
- (iii) comply with UTS's Supplier Code of Conduct and any policies or directions reasonably notified by UTS.

(b) The Supplier must promptly notify UTS if any conflict of interest arises during the performance of the Contract and comply with any reasonable directions from UTS to manage the conflict.

8. Acceptance

(a) UTS may inspect the Goods and Services within 14 days of delivery to ensure compliance with the Specifications.

(b) If UTS determines that the Goods or Services do not comply with the Specifications, it will notify the Supplier in writing. The Supplier must, within 5 business days and at no additional cost, propose a remedy for the Goods and Services. UTS may accept the remedy or require the Supplier to replace, repair or re-supply the Goods or Services or refund the amounts paid by UTS.

(c) If UTS does not notify the Supplier of any non-compliance within 14 days, the Goods and Services will be deemed accepted. However, acceptance does not limit or waive UTS's rights under the Warranty Period or applicable Laws.

9. Title and risk

(a) Title to the Goods passes to UTS upon delivery to UTS's premises or upon full payment, whichever occurs first.

(b) Risk in the Goods remains with the Supplier until delivery is completed at UTS's premises.

10. Price and payment

(a) UTS agrees to pay the Supplier the Price, provided the Goods and Services are supplied in accordance with the Contract. The Price includes all costs and expenses unless otherwise specified in the Purchase Order.

(b) The Supplier may invoice UTS for the Price at the times specified in the Purchase Order. If no times are specified, the Supplier may invoice UTS after UTS has accepted the Goods or Services in accordance with clause 8.

(c) UTS must pay the Supplier within 30 days of receipt of a correctly rendered invoice. An invoice is correctly rendered if it:

- (i) is a valid tax invoice for the purposes of the GST Act;
- (ii) claims only amounts due for payment in accordance with the Contract;
- (iii) itemises the Goods and Services supplied to allow UTS to verify the amounts;
- (iv) includes the Purchase Order number provided by UTS, if available; and
- (v) is addressed and sent as specified in the Purchase Order or as otherwise instructed by UTS.

The Supplier must provide any additional information or documentation reasonably requested by UTS to support the invoice.

(d) UTS may withhold payment of the disputed portion of any invoice until the dispute is resolved, provided UTS gives the Supplier written notice with details of the dispute.

(e) UTS may, upon 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.

11. Taxes

(a) Unless otherwise specified in the Purchase Order, the Price includes all applicable taxes, duties and charges, except GST.

(b) If GST is payable, UTS will pay the applicable GST upon receiving a valid tax invoice from the Supplier.

12. Records and audit

The Supplier must maintain accurate records of its performance under the Contract for a period of 3 years from the date of performance. Upon request, the Supplier must provide UTS or its nominee with access to these records for the purpose of audits or inspections related to performance and compliance.

13. Intellectual Property Rights

- (a) The Supplier retains ownership of all Intellectual Property Rights in any materials, including works or deliverables, created specifically for UTS during the provision of the Services. The Supplier grants UTS a worldwide, perpetual, royalty-free, non-exclusive licence, with the right to sublicense, to use, modify, adapt, reproduce and distribute those materials for UTS's operations.
- (b) The Supplier grants UTS a worldwide, perpetual, royalty-free, non-exclusive licence, with the right to sublicense, to use any of the Supplier's pre-existing Intellectual Property Rights incorporated into the Goods, Services or materials, to the extent required for UTS to receive, use, maintain and modify the Goods, Services or materials for UTS's operations.
- (c) The Supplier must ensure that any third party Intellectual Property Rights incorporated into the Goods, Services or materials are licensed to UTS on terms no less favourable than those granted under clause 13(b).
- (d) The Supplier must obtain all necessary consents from its Personnel involved in creating the materials to allow UTS to use, modify, adapt, reproduce and distribute those materials, including consents to waive any moral rights.

14. Confidentiality

- (a) Each party must keep the other party's Confidential Information confidential and use it only for the purposes of the Contract. Confidential Information must not be disclosed except:
- (i) with the other party's prior written consent;
 - (ii) to Personnel or professional advisers to the extent necessary to perform obligations or exercise rights under the Contract; or
 - (iii) as required by Laws.
- (b) UTS retains ownership of all its data, which forms part of UTS's Confidential Information. The Supplier may only use UTS's data as necessary to perform its obligations under the Contract or for other purposes approved by UTS in writing.

15. Privacy

- (a) If the Supplier has access to UTS's personal information, including health information, under the Contract, it must:
- (i) only use or disclose the information for the purpose of performing the Contract;
 - (ii) not transfer the information outside Australia, or access it from outside Australia, without UTS's prior written consent; and
 - (iii) ensure its actions do not cause UTS to breach any applicable privacy Laws, including the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).
- (b) The Supplier must notify UTS as soon as reasonably possible of any actual or suspected breach involving UTS's personal information and cooperate with UTS to address and mitigate the impact of the breach.

16. Warranties

- (a) The Supplier warrants that, during the Warranty Period, the Goods will:
- (i) be new and free from defects in design, materials, workmanship and, where applicable, installation and harmful code;
 - (ii) conform to the Specifications; and
 - (iii) be fit for their intended purpose.
- (b) The Supplier warrants that, during the Warranty Period, the Services will:
- (i) be performed with due care and skill, in a proper and timely manner and in accordance with good industry practices;
 - (ii) be performed by Personnel with appropriate qualifications, skills and experience;
 - (iii) meet the Specifications; and
 - (iv) be fit for their intended purpose.

(c) The Supplier warrants that there is no conflict of interest in respect of itself and its Personnel which relates to the Supplier's ability to perform its obligations under the Contract.

(d) The Supplier warrants that the supply of the Goods and Services (including any materials), and their use by UTS as contemplated by the Contract, will comply with all applicable Laws and not infringe the rights of any third party, including Intellectual Property Rights.

(e) If UTS identifies any defect or non-compliance during the Warranty Period, the Supplier must, at no additional cost and without limiting UTS's other rights or remedies, repair, replace or resupply the non-compliant Goods or Services as soon as practicable after receiving written notice from UTS.

(f) If the Supplier fails to rectify the defect or non-compliance within a reasonable period, UTS may, at its discretion, engage a third party to rectify the issue at the Supplier's expense, seek a refund or recover any additional costs incurred.

17. Indemnities

The Supplier indemnifies UTS against all claims, damages, costs and liabilities arising out of or in connection with:

- (a) personal injury or death to any person, or loss of or damage to property, caused by the Supplier or its Personnel;
- (b) any claim alleging infringement of Intellectual Property Rights relating to the Goods or Services;
- (c) breaches of confidentiality or privacy obligations under the Contract; and
- (d) fraud or wilful misconduct by the Supplier or its Personnel.

18. Limitation of liability

(a) To the extent permitted by Laws, the aggregate liability of either party under or in connection with the Contract is limited to two times the Price.

(b) The limitation of liability in clause 18(a) does not apply to liabilities arising from personal injury or death, loss of or damage to property, breaches of confidentiality or privacy obligations, infringement of Intellectual Property Rights or fraud or wilful misconduct by a party.

(c) Neither party is liable to the other party for any consequential, incidental, indirect or special damages or losses, including loss of profits, revenue, goodwill, anticipated savings or opportunities.

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

(e) To the extent permitted by Laws, Part 4 of the *Civil Liability Act 2002* (NSW), and any equivalent statutory provisions, do not apply to the Contract or the supply of the Goods and Services.

(f) The Supplier's obligation to indemnify UTS under clause 17 is reduced to the extent that such claims, damages, costs or liabilities arose from UTS's failure to take reasonable steps to mitigate them.

19. Supply chain integrity

(a) The Supplier acknowledges that UTS has obligations under applicable Laws to ensure that its operations and supply chains are not connected with modern slavery practices, such as slavery, servitude, forced labour, deceptive recruitment for labour services, debt bondage, forced marriage, human trafficking and the worst forms of child labour (**Modern Slavery**).

(b) The Supplier must take all reasonable steps to identify, assess and address risks of Modern Slavery practices in its operations and supply chains used in the supply of the Goods and Services. If the Supplier becomes aware of any such Modern Slavery practices, it must notify UTS in writing as soon as reasonably practicable. The Supplier must also provide any information reasonably required by UTS to assist UTS in complying with its legal obligations related to Modern Slavery.

20. Cancellation and suspension

UTS may cancel or suspend the Contract at any time before the delivery or performance of the Goods or Services by giving written notice to the Supplier. If the cancellation or suspension is not due to any breach or delay by the Supplier, the Supplier may invoice UTS for direct, reasonable and substantiated costs necessarily incurred, provided those costs could not reasonably have been mitigated.

21. Termination

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

- (i) the Supplier fails to deliver the Goods or complete the Services by the specified date or timeframe, where such failure is a result of a breach of the Contract by the Supplier, and the Supplier does not remedy this failure within 10 business days of receiving written notice from UTS;
- (ii) the Supplier breaches any other material term of the Contract and fails to remedy the breach within 10 business days of receiving written notice from UTS specifying the breach; or
- (iii) the Supplier becomes insolvent, bankrupt or enters into liquidation or administration.

If UTS terminates the Contract under this clause, its sole liability is to pay the Supplier for the Goods and Services supplied prior to termination, subject to substantiation by the Supplier and the submission of a correctly rendered invoice.

(b) The Supplier may terminate the Contract immediately by providing written notice to UTS if UTS breaches a material term of the Contract and fails to remedy the breach within 10 business days of receiving written notice from the Supplier specifying the breach.

22. Consequences of termination

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

(b) The termination or expiry of the Contract will not affect or extinguish any terms which expressly, or by their nature, are intended to survive, including clauses 12, 13, 14, 15, 16, 17, 18, 22 and 23.

23. General

(a) **Public statements and use of name and logo:** The Supplier must not issue any public statement or press release about the Contract or its activities under the Contract, except with UTS's prior written consent or where required by law. The Supplier must not use UTS's name, logos, trade marks or branding, except with UTS's prior written consent.

(b) **Notices:** All notices under the Contract must be sent by one party to the other party at the addresses specified in the Purchase Order or as otherwise notified in writing by the other party.

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

(d) **Variation:** Any variation to the Contract must be in writing and signed by authorised representatives of both parties to be effective.

(e) **Waiver:** A waiver of any provision of the Contract is only effective if in writing and signed by the party granting it. Failure to enforce any right under the Contract does not waive that right.

(f) **Assignment:** The Supplier must not assign or novate the Contract or any rights or obligations under it without prior written consent from UTS.

(g) **Severability:** If any provision of the Contract is void, illegal or unenforceable, that provision will be severed, and the remaining provisions will continue in full force and effect without being affected or impaired.

(h) **Electronic execution:** The parties may execute the Contract electronically and in counterparts, subject to Laws.

(i) **Entire agreement:** The Contract, including the Purchase Order and any attachments, constitutes the entire agreement between the parties and supersedes any prior agreements or representations on its subject matter.

(j) **Governing laws:** The Contract is governed by the Laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

24. Definitions

In the Contract:

Confidential Information means any information, including business, financial, technical or personal information, that is designated as confidential or by its nature is confidential. It excludes information that is in the public domain other than through a breach of confidence by the receiving party.

Contract means the agreement formed when the Supplier accepts the Purchase Order in accordance with clause 2(b), incorporating these Terms and Conditions and the terms specified in the Purchase Order.

Goods means the goods (if any) described in the Purchase Order, including any related items, components or ancillary materials necessary for their use.

GST and GST Act have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all copyright, trade marks, designs, patents, semiconductor and circuit layout rights, trade names, business names, company names, domain names, confidential information and other proprietary rights, and rights to apply for registration of any of these rights, whether created before or after the date of the Contract and anywhere in the world.

Laws means any legally binding legislation, statute, regulation, by-law or code enacted from time to time in any relevant jurisdiction, including the Commonwealth or any State or Territory government. This includes applicable common law, principles of equity and any mandatory standards or industry codes of conduct that are applicable to the performance of the Contract.

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

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

Purchase Order means any form of order or purchase issued by UTS for the Goods and Services under or incorporating these Terms and Conditions.

Services means the services (if any) described in the Purchase Order, including any ancillary services or materials provided in connection with the performance of the services.

Specifications means the requirements for a Good or Service as set out or referenced in the Purchase Order, including agreed specifications regarding design, quality, functionality and performance, any samples or demonstrations provided by the Supplier and all published specifications for that Good or Service from the Supplier or third party manufacturers.

Supplier Code of Conduct means the document setting out the minimum expectations and behaviours that suppliers must meet when conducting business with UTS, available at <https://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.

25. Interpretation

In the Contract, unless the context indicates otherwise:

- (a) singular terms include their plural forms and vice versa;
- (b) obligations or rights involving two or more people apply to them both together and individually;
- (c) the terms "includes" and "including" are not restrictive;
- (d) references to:
 - (i) a person includes individuals, partnerships, joint ventures, government agencies, associations, corporations or other corporate bodies;
 - (ii) a document includes any changes or additions to that document;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a clause refers to a clause within these Terms and Conditions;
 - (v) legislation includes any changes, re-enactments or replacements of that legislation; and
 - (vi) monetary amounts are in Australian dollars unless specified otherwise;
- (e) if an action required by the Contract (other than the Services) falls on a non-business day in New South Wales, it must be done on the next business day in New South Wales; and
- (f) no rule of construction applies to disadvantage a party because that party was responsible for the preparation of the Contract.