

UTS's standard terms and conditions for suppliers

1. Application of Standard Terms

- (a) These Standard Terms apply to the Purchase Order issued by UTS to acquire Goods and Services from the Supplier.
- (b) Where UTS and the Supplier have entered into a separate written agreement in relation to the Goods and Services, the terms of that written agreement will apply and these Standard Terms (other than this clause 1(b)) will not apply.
- (c) All other terms and conditions, including any Supplier or third party terms and conditions (whether included or referenced in any invoice, quote, proposal or other document), are excluded and in no circumstance will they apply to the Purchase Order or to the supply of the Goods and Services, except with the prior written agreement of UTS.
- (d) The Purchase Order prevails over these Standard Terms only to the extent that UTS and the Supplier have agreed to the deletion or amendment of particular clauses of these Standard Terms in the Purchase Order. Otherwise, if there is any inconsistency between these Standard Terms and a Purchase Order, these Standard Terms prevail to the extent of such inconsistency.

2. Formation of Contract

- (a) The Supplier may accept the Purchase Order by notifying UTS in writing or by supplying the Goods and Services, or any part of them.
- (b) When the Supplier accepts a Purchase Order, a contract for the supply of the Goods and Services is formed between the Supplier and UTS on these Standard Terms and the terms specified in the Purchase Order (**Contract**).

3. Duration of Contract

Unless otherwise specified in the Contract, the Contract starts on the date it is accepted by the Supplier and continues until each party has fulfilled its obligations under the Contract or the Contract is cancelled or terminated earlier in accordance with the Contract.

4. Supply of Goods and Services

General

- (a) The Supplier must supply the Goods and Services in accordance with the Contract, any Specifications, all applicable laws and the reasonable directions of UTS.

Delivery requirements

- (b) The Supplier must deliver the Goods and perform the Services at the time and place and in accordance with the time periods (if applicable) specified in the Purchase Order, or as UTS may otherwise reasonably direct.
- (c) The Supplier must keep UTS informed of any expected delays or other matters that may affect the delivery of the Goods and performance of the Services (as applicable) in accordance with the Contract. UTS may, in its discretion, specify in writing a later time for the delivery or performance or completion of the Goods and Services.

Packaging

- (d) The Supplier must pack, mark and label the Goods to ensure safe delivery and handing by UTS after delivery. If the Contract requires specified packing, marking or labelling, then the Supplier must comply with those requirements.

Documents

- (e) The Supplier must supply UTS with all user documents containing sufficient information to enable UTS to operate, make full use of and maintain the Goods and Services and any other documents specified in the Contract or usually supplied with the Goods and Services.

Access to UTS's premises

- (f) If the Supplier or its Personnel require access to UTS's premises to supply the Goods and Services, the Supplier must, and must ensure that its Personnel:
- (i) access the premises at the times agreed by UTS;
 - (ii) minimise any disruption or inconvenience to UTS or its operations, Personnel or other suppliers; and

(iii) comply with any conditions of entry or other requirements applicable to access to and attendance at the premises as specified in the Contract or notified by UTS to the Supplier from time to time and all relevant obligations under the Contract.

Performance and quality

(g) The Supplier must ensure that the Goods and Services comply with the Specifications and meet the requirements of the Contract.

(h) The Goods must be:

- (i) free from harmful codes (if applicable) and defects in design, materials, workmanship and installation;
- (ii) of good and merchantable quality and fit for the purpose for which they are supplied; and
- (iii) free from any security interest and new and not used by any person (unless agreed in writing by UTS).

(i) The Services must be:

- (i) performed with due skill, care and diligence, in a proper, timely and safe manner and in accordance with best industry practice; and
- (ii) performed using suitably qualified and experienced Personnel.

5. 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) To the extent that the Supplier subcontracts any of its obligations under the Contract to subcontractors, 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.

6. Compliance

Laws, standards and policies

(a) The Supplier must obtain and maintain all licences or other approvals necessary for the lawful supply of the Goods and Services and arrange any necessary customs entry for the Goods.

(b) The Supplier must comply with:

- (i) all applicable laws, including regulations, standards and codes made under any such laws;
- (ii) all applicable employment-related laws in relation to it and its Personnel, including in relation to workers' compensation, leave entitlements, payroll tax, income tax, PAYG tax, superannuation contributions and all other employment entitlements;
- (iii) the UTS Supplier Code of Conduct; and
- (iv) any other laws, standards and UTS policies referenced in the Contract or which UTS reasonably notifies the Supplier from time to time as applicable or relevant to the Contract.

Work health and safety

(c) The Supplier must ensure that all work is carried out and completed in accordance with good and safe work practices and so as to comply with the *Work, Health and Safety Act 2011* (NSW) and any associated legislation and that it does not place UTS in breach of these laws.

(d) The Supplier must notify UTS promptly of all work health and safety matters arising out of, or in any way in connection with, the supply of the Goods and Services.

Conflicts of interest

(e) The Supplier must notify UTS promptly in writing if a conflict of interest arises or is likely to arise in the performance of its obligations under the Contract by itself or by any of its Personnel.

(f) If such a conflict of interest, in UTS's view, significantly affects the interests of UTS, and the Supplier is unable to resolve the conflict of interest to the satisfaction of UTS within 14 days of receipt of a notice from UTS, then UTS will be entitled to terminate the Contract under clause 19(a)(iv).

7. Acceptance

(a) UTS may notify the Supplier at any time within 30 days after delivery of the Goods or performance of the Services (as applicable) that UTS accepts the relevant Goods and Services or that UTS rejects the Goods and Services on grounds that they do not comply with the requirements of the Contract.

(b) If UTS rejects the Goods and Services in accordance with the Contract, UTS may require the Supplier to collect any relevant Goods and (at UTS's sole option) promptly:

- (i) replace, repair or resupply the Goods and Services at no cost to UTS; or
- (ii) refund to UTS any amount that UTS has paid for them.

(c) Any acceptance or rejection by UTS does not constitute an admission or evidence that the Goods and Services comply with, or that the Supplier has performed its obligations under, the Contract.

8. Title and risk

(a) Title in the Goods passes to UTS on the earlier of delivery to UTS or the date on which UTS makes payment.

(b) The risk in the Goods and the deliverables relevant to the Services passes to UTS on delivery to UTS or completion of the Services.

9. Price and payment

Price

(a) Subject to the Contract, UTS must pay the Supplier the Price.

(b) The Price is inclusive of all costs and expenses incurred by the Supplier for the supply of the Goods and Services and no further amounts are payable by UTS unless otherwise specified in the Contract.

Invoicing and payment

(c) The Supplier may invoice UTS for the Price at the times specified in the Contract or, if no times are specified, following acceptance of the Goods and Services in accordance with clause 7.

(d) UTS must pay any correctly rendered and undisputed invoice issued by the Supplier under the Contract within 30 days following receipt of that invoice.

(e) An invoice is correctly rendered if it:

- (i) specifies an amount that is due for payment and is a correctly calculated in accordance with the Contract;
- (ii) is, where required by Australian law, a valid tax invoice within the meaning of the GST Act;
- (iii) includes (where available) the Purchase Order number;
- (iv) where relating to an amount that is payable subject to acceptance, UTS has not rejected the Goods and Services in accordance with clause 7;
- (v) includes adequate information for UTS to verify that the invoice is accurate and is accompanied by supporting documentation reasonably requested by UTS; and
- (vi) is addressed and delivered in accordance with the Contract.

(f) If UTS disputes any invoiced amount, then UTS must notify the Supplier and pay any amounts not in dispute.

(g) The parties agree that the making of a payment is payment on account only and is not an acknowledgement that the Supplier has supplied the Goods and Services in accordance with the Contract.

(h) UTS may, on notice to the Supplier, deduct from (set-off against) any amount otherwise payable to the Supplier any debt due from Supplier to UTS, or any claim to money which UTS may have against the Supplier, under or in connection with the Contract.

Taxes

(i) Except where expressly specified in the Contract, the Price is inclusive of all taxes, excluding GST.

(j) If the Supplier makes a supply under or in relation to the Contract in respect of which GST is payable, then UTS must pay to the Supplier an additional amount equal to the GST payable on the supply.

10. Records and audit

(a) The Supplier must keep and maintain financial, operational and technical records in accordance with prudent business practice, as required by any applicable law and as reasonably necessary for UTS to conduct any audit or inspection in accordance with clause 10(b).

(b) The Supplier must provide to UTS or its nominee reasonable access to and copies of records and information in connection with the conduct of any audit or inspection relevant to Supplier's performance and compliance with the Contract.

11. Intellectual property

Intellectual Property Rights in Contract Material

(a) Subject to clause 11(b), the Supplier owns the Intellectual Property Rights in any Contract Material and grants to UTS a royalty-free, world-wide, non-exclusive, irrevocable and perpetual licence (with the right to sub-licence) to exercise the Intellectual Property Rights in the Contract Material for any purpose connected with UTS.

Pre-existing and third party Intellectual Property Rights

(b) The Contract does not affect the ownership of Intellectual Property Rights in the Goods or any pre-existing Intellectual Property Rights or third party Intellectual Property Rights.

(c) The Supplier grants to UTS a royalty-free, world-wide, non-exclusive, irrevocable and perpetual licence (with the right to sub-licence) to use any of the Supplier's pre-existing Intellectual Property Rights incorporated in or otherwise required to use the Goods, Services and Contract Material for the purpose of and to the extent necessary for UTS to exercise its rights under the Contract and obtain the full use of the Goods and Services.

(d) The Supplier must not, without UTS's prior approval, incorporate any third party Intellectual Property Rights into the supply of the Goods, Services or Contract Material unless it has procured for UTS a licence on terms no less favourable than the terms set out in this clause 11 and ensured that the use of such third party Intellectual Property Rights does not constrain UTS's use of the Goods and Services or any Contract Material.

Additional obligations

(e) The Supplier must, on UTS's request and at its cost, do all things as may be necessary to give effect to the intellectual property provisions in the Contract.

Warranty

(f) The Supplier warrants that the supply of the Goods and Services, and UTS's use of those Goods and Services in the manner envisaged by the Contract, does not and will not infringe any rights of a third party (including any Intellectual Property Rights).

12. Information management

Confidentiality

(a) Where either party (**Recipient**) receives or otherwise possesses Confidential Information of the other party (**Discloser**), the Recipient must:

- (i) keep it confidential;
- (ii) in the case of the Supplier and its Personnel, only use it where required to exercise its rights or perform its obligations under the Contract; and
- (iii) not disclose it to anyone other than:
 - (A) with the prior consent of the Discloser and on the condition that the subsequent recipient is bound by the same or substantively equivalent confidentiality requirements as specified in the Contract;
 - (B) where required by the *Government Information (Public Access) Act 2009* (NSW) which may require UTS to publish or disclose certain information concerning the Contract;
 - (C) where required by any other law, provided that the Recipient gives the Discloser reasonable notice of any such disclosure; or
 - (D) to its Personnel, professional advisers, auditors and insurers where the disclosure is in connection with that party's exercise of its rights or performance of its obligations under the Contract.

(b) Without limiting its obligations, the Recipient:

- (i) undertakes to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the Discloser's Confidential Information; and
- (ii) must promptly notify the Discloser if it becomes aware of any actual or suspected unauthorised use or disclosure of the Discloser's Confidential Information.

Privacy

(c) Where the Supplier deals with personal information (including health information) of UTS in connection with the Contract, the Supplier must (and must ensure that its Personnel):

- (i) only use it for the sole purpose of performing its obligations under the Contract;
- (ii) not transfer it outside Australia, or access it (or allow it to be accessed) from outside Australia; and

(iii) not do anything which would cause UTS to be in breach of privacy laws, including the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

UTS Data

(d) The Supplier acknowledges and agrees that it obtains no right, title or interest with respect to UTS Data, other than a right to use it for the sole purpose of, and only to the extent required for, the supply of the Goods and Services in accordance with the Contract. The Supplier must ensure that its Personnel manage and safeguard UTS Data in accordance with all the requirements of the Contract.

13. Defects

(a) Notwithstanding acceptance of the Goods and Services in accordance with clause 7, the Supplier must remedy any Defect in the Goods and Services requested by UTS to the Supplier at any time within the Warranty Period.

(b) The Supplier is responsible for remedying this Defect at its risk and cost and in a prompt and timely manner. If the Supplier does not remedy the Defect in accordance with this clause 13, UTS may arrange to have the Defect remedied by a third party and the costs incurred by UTS will be a debt due from the Supplier to UTS.

14. Insurance

(a) Unless otherwise agreed in writing by the parties, the Supplier must hold and maintain:

- (i) public liability insurance with a limit of cover of at least \$10 million in respect of each occurrence for the duration of the Contract;
- (ii) where applicable, products liability insurance with a limit of cover of at least \$10 million in respect of each occurrence and in the annual aggregate for the longer of the duration of the Contract and the Warranty Period;
- (iii) if the Services involve any professional services, professional indemnity insurance with a limit of cover of at least \$5 million in respect of each occurrence and in the aggregate, to be held for the duration of the Contract at least seven years afterwards; and
- (iv) workers compensation insurance as required by law.

(b) Within 10 days following a request from UTS, the Supplier must provide UTS with a certificate of currency or other evidence that the Supplier holds all necessary insurances as required under the Contract.

15. Indemnities and liabilities

Indemnities

(a) The Supplier indemnifies UTS against any Loss arising out of or connected with any:

- (i) personal injury or death to any person, or damage to or loss of any property, to the extent caused or contributed to by an act or omission of the Supplier or its Personnel;
- (ii) claim brought by a third party relating to any actual or alleged infringement of any Intellectual Property Rights or third party rights in the Contract Material or Goods and Services or associated with the Goods and Services;
- (iii) breach of the Supplier's or its Personnel's obligations under clause 12 (Information management); or
- (iv) any act or omission of fraud, recklessness or wilful misconduct or misrepresentation of the Supplier or its Personnel.

Liability Cap

(b) Subject to clause 15(c), the liability of each party under the Contract is limited to two (2) times the amounts paid or payable by UTS under the Contract (**Liability Cap**).

(c) The Liability Cap does not apply in relation to each of the following:

- (i) liability for personal injury, death or damage to property;
- (ii) a breach of a third party's Intellectual Property Rights or moral rights; or
- (iii) a breach of confidentiality, security or privacy obligations.

Exclusion of liability

(d) In no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for special, indirect, incidental or consequential loss or damage.

General

- (e) Each party's liability to the other party is reduced proportionally to the extent caused or contributed to by the other party.
- (f) The limitations and exclusions of liability in the Contract only apply to the extent permitted by law.
- (g) The Supplier's obligation to indemnify UTS against Loss under clause 15(a) is reduced to the extent that the relevant Loss arose due to a failure of UTS to take reasonable steps to mitigate that Loss.
- (h) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent proportionate liability statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under the Contract or at law.

16. Supply chain integrity

- (a) The Supplier acknowledges that UTS has legal obligations 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**), and requires the same of its suppliers.
- (b) The Supplier must:
 - (i) take reasonable steps to identify, assess and address the risk of Modern Slavery in its operations and supply chains (and those of any subcontractor or entity that the Supplier owns or controls) used in the supply of the Goods and Services; and
 - (ii) notify UTS in writing as soon as possible of any actual or suspected Modern Slavery risks or practices in the performance of the Contract and of the remedial action that the Supplier proposes to take to eliminate or minimise those risks and practices.
- (c) On UTS's request, the Supplier must provide UTS with any information and assistance to enable UTS to meet its obligations under laws relating to Modern Slavery, including reporting obligations.

17. Unexpected events

Neither party is liable for any delay or failure to perform its obligations under the Contract where such delay or failure is due to any event beyond that party's reasonable control. This clause does not apply to UTS's obligation to pay any undisputed Price due and payable.

18. Cancellation and suspension

- (a) UTS may, at any time before delivery or performance, cancel or suspend the Contract.
- (b) If UTS cancels or suspends the Contract other than due to any breach by the Supplier or failure or delay of the Supplier or its Personnel to carry out its obligations in accordance with the Contract, then the Supplier will be entitled to invoice UTS the direct, reasonable and substantiated costs (excluding any profit, profit component or overheads) necessarily incurred by the Supplier as a result of implementing the cancellation or suspension, to the extent such costs could not have been reasonably mitigated or avoided by the Supplier.

19. Termination

- (a) UTS may, in its sole discretion, immediately terminate the Contract by written notice to the Supplier:
 - (i) if the Supplier fails to deliver the Goods within seven (7) days of the delivery date or fails to perform the Services within seven (7) days of the completion date specified in the Contract, in each case because of a breach of a term of the Contract by the Supplier;
 - (ii) if the Supplier breaches a term of the Contract which is not capable of remedy, or is capable of remedy, but is not remedied within 10 business days of receiving a notice from UTS to do so;
 - (iii) if the Supplier becomes insolvent, bankrupt or subject to any form of liquidation or administration and to the extent permitted by law; or
 - (iv) in any other circumstances set out in the Contract,

in which circumstances, UTS's sole liability will be to pay the Supplier, subject to substantiation by the Supplier and the Supplier submitting a correctly rendered invoice, for Goods and Services supplied prior to the date of termination in accordance with the Contract.
- (b) The Supplier may immediately terminate the Contract by at least 10 business days' prior written notice to UTS if UTS materially breaches the Contract and does not remedy the breach within 30 days of receiving a written notice from the Supplier requiring it to do so.

20. Consequences of expiry or termination

(a) Except where otherwise agreed by UTS in writing, on the expiry or termination of the Contract, the Supplier must:

- (i) stop work (subject to any agreement to provide ongoing transition-out services); and
- (ii) at UTS's election, securely return or destroy UTS's Confidential Information, UTS Data and intellectual property, except for any information that the Supplier is required by law to keep.

(b) The termination or expiry of the Contract will not affect or extinguish the terms which by their nature are intended to survive, including the provisions in relation to records and audit, intellectual property, Defects, information management, insurance and indemnities and liabilities.

(c) Termination or expiry of the Contract is without prejudice to any other rights or obligations which may have accrued under the Contract before the date of termination or expiry.

21. General

(a) **Consent to issue public statements and use UTS's name and logo.** The Supplier must not issue any press release or make any other public statement regarding the Contract or the Goods and Services without UTS's prior written consent, except as required by law. The Supplier must not use UTS's name or any of UTS's logos, trade marks or branding without UTS's prior written consent.

(b) **Notices.** All notices in connection with the Contract must be directed to the other party at any address specified in the Contract or as otherwise advised from time to time.

(c) **Beneficiaries.** UTS enters into the Contract on its own behalf and on trust for each of its 'controlled entities' (as defined in section 16A of the *University of Technology Sydney Act 1989 (NSW)*).

(d) **Relationship.** Nothing in the Contract creates or is intended to constitute a relationship between the parties of employer and employee, principal and agent, partnership or joint venture. Neither party has authority to bind the other party.

(e) **Variation.** No variation or amendment of the Contract is effective unless it is made in writing and signed by an authorised representative of each party.

(f) **Waiver.** No waiver of a right or remedy under the Contract is effective unless it is in writing and signed by the party granting it.

(g) **Assignment and novation.** The Supplier must not assign, novate or otherwise transfer any of its rights or obligations in relation to the Contract without UTS's prior written consent.

(h) **Severability.** If any part or provision of the Contract is held to be invalid or unenforceable in a given jurisdiction, then that part or provision is severed for that jurisdiction and the remainder of the Contract will continue to operate with full force and effect.

(i) **Signing and counterparts.** Subject to applicable laws, the parties may execute the Contract electronically and in one or more counterparts.

(j) **Entire agreement.** Subject to clause 1(b), the Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes any previous negotiations, representations, warranties, statements, understandings or agreements between the parties.

(k) **Governing law.** The Contract is governed by the laws of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales as a convenient forum for any dispute between them.

22. Definitions and interpretation

(a) In the Contract, unless the contrary intention appears:

Confidential Information means information that is by its nature is confidential or which the Recipient knows or ought to know is confidential, including information that relates to or comprises financial, corporate or commercial information of any party or the affairs of a third party, but excludes information in the public domain other than due to a breach of confidentiality.

Contract Material means any materials (including any intellectual property) which the Supplier creates in the course of supplying the Services, excluding UTS Data.

Defect means, in respect of any Goods or Services, any aspect that is not in accordance with the requirements of the Contract.

Goods means the goods described in the Contract (if any) and any related or ancillary matters or things which are required or reasonably incidental to the proper supply or use of the goods.

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all present and future rights in intellectual property, including patents, trade marks, service marks, right to design, copyright, know-how and any other intellectual or industrial property right whether or not registered and anywhere in the world.

Loss means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, claim, demand, outgoing, fine or payment of any nature or kind.

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

Price means the amounts payable by UTS for any Goods or Services specified in the Contract.

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

Services means the services described in the Contract (if any), including any associated documentation, and any related or ancillary matters or things which are required or reasonably incidental for the proper supply or use of the services.

Specifications in respect of a Good or Service, means:

- (i) the requirements for that Good or Service as detailed or referred to in the Contract, including all agreed technical or descriptive specifications as to the functional, operational, performance or other characteristics relating to that Good or Service;
- (ii) any sample or demonstration provided by the Supplier to UTS; and
- (iii) all published specifications for that Good or Service (as applicable), including the Supplier's or third party manufacturer's specifications.

Supplier means the entity identified as the supplier in the Contract.

UTS means the University of Technology Sydney.

UTS Data means all data (including metadata) and information (including personal information) relating to UTS in whatever form that information may exist and whether stored in, generated by or processed as part of the supply of the Goods, Services or Contract Material, but excluding performance metadata automatically generated in the course of normal operations.

UTS Supplier Code of Conduct means UTS's Supplier Code of Conduct published on UTS's website and available at <https://www.uts.edu.au/supplier-code-of-conduct>.

Warranty Period means, unless otherwise agreed by the parties in writing, the period commencing from the date of delivery or installation by the Supplier of the Goods or completion of the Services and continuing for one (1) year or the period of the Supplier's or third party manufacturer's standard warranty applicable to the Goods and Services, whichever is the longest.

(b) In the Contract, unless the contrary intention appears:

- (i) the singular includes the plural and vice versa;
- (ii) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (iii) words "includes" and "including" and similar expressions are not words of limitation;
- (iv) a reference to:
 - (A) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (B) a party includes its successors and permitted assigns;
 - (C) a clause is to a clause of these Standard Terms;
 - (D) legislation or any legislative provision is to that legislation or provision as amended, re-enacted or replaced, and includes subordinate legislation issued under it; and
 - (E) a monetary amount is in Australian dollars unless otherwise stated;
- (v) when a day on or by which any act is done under the Contract (other than the Services) is not a business day in New South Wales, that act must be done on the next business day in New South Wales; and
- (vi) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of the Contract.