

## 1. Definitions

In these terms and conditions, unless the context otherwise requires, the following terms have the following meanings:

- 1.1 **Delivery Date** means the date by which the Goods and/or Services must be supplied to the University, as specified in the Purchase Order.
- 1.2 **Goods** means the goods purchased by the University as specified on the Purchase Order.
- 1.3 **GST** means a goods and services tax imposed on the supply of goods and services under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related legislation.
- 1.4 **Intellectual Property Rights** means all intellectual property rights, including, without limitation:
  - a) patents, copyright, rights in circuit layouts, plan breeder's rights, registered designs, trademarks and the right to have confidential information kept confidential; and
  - b) any application or right to apply for registration of any of those rights.
- 1.5 **Modern Slavery Act** means the *Modern Slavery Act 2018* (Cth).
- 1.6 **Modern Slavery** has the meaning given in section 4 of the Modern Slavery Act.
- 1.7 **Personal Information** means personal information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) and health information as defined in the *Health Records and Information Privacy Act 2002* (NSW).
- 1.8 **Purchase Order** means a purchase order issued by the University to the Supplier under these terms and conditions.
- 1.9 **Services** means all services to be provided by the Supplier as specified on the Purchase Order or provided as ancillary to the provision of Goods.
- 1.10 **Supplier** means the party providing the Goods and/or Services specified on the Purchase Order.
- 1.11 **University** means Southern Cross University and its related entities (including Southern Cross Campus Services Limited).

## 2. General

- 2.1 Except where the parties have entered into a written contract, the Purchase Order and these Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter of the Purchase Order, and supersede all prior agreements or understandings of the parties.
- 2.2 The Supplier must comply with any reasonable instructions, guidelines, policies or codes of conduct relevant to the supply of the Goods or Services.
- 2.3 In connection with the supply of Services:
  - a) subject to paragraph (b) and clause 2.4, the Supplier may delegate the performance of the Services to any of its employees or subcontract Services to another service provider;
  - b) the University may require, if specified in the Purchase Order, that the Services be performed by a particular employee of the Supplier, with the agreement of the Supplier;
  - c) the parties acknowledge that the Supplier acts as an independent contractor and not as an employee, partner or agent of the University and the Supplier has no authority to act for or to bind the University in any manner whatsoever other than as expressly provided for in these Terms and Conditions;
  - d) as an independent contractor, the Supplier will be solely responsible for the payment of all relevant taxes, duties and charges payable with respect to the goods and/or services supplied including payments to its workers and sub-contractors for salary and leave entitlements and any other obligations including superannuation, WorkCover insurance and the payment of taxes and levies.
- 2.4 The Supplier shall not subcontract the whole or any part of the Goods and/or Services without the prior written consent of the University, which will not be unreasonably withheld. Approval to subcontract will not relieve the Supplier of any liability or obligations under a Purchase Order and these Terms and Conditions.
- 2.5 Each provision of these terms and conditions is severable. If any provision is or becomes invalid or unenforceable or contravenes any application law or regulation, the remaining provisions will not be affected.
- 2.6 No variation, waiver, addition or modification of any of a Purchase Order or these terms and conditions will be binding upon the parties unless approved in writing by a delegated officer of the University who has authority to approve such amendment.

## 3. Price, Invoicing and GST

- 3.1 In consideration of the Supplier providing the Goods and/or Services under this agreement, the University agrees to pay the Supplier the price specified on the Purchase Order.
- 3.2 The Purchase Order price is exclusive of GST and any other taxes or duties imposed on or in relation to the Goods and/or Services, unless stated otherwise.
- 3.3 Subject to the Supplier having complied with the Purchase Order and these terms and conditions, the University agrees to pay the supplier within 30 days of receipt and acceptance of an invoice by the University, unless otherwise agreed in writing.
- 3.3 The Supplier must issue the University with an itemised invoice for the Goods and/or Services for which it requires payment. The tax invoice must:
  - a) be sent to the University at the address specified on the Purchase Order;
  - b) specify the Purchase Order number;
  - c) provide a brief description of goods and/or services supplied (including the price and quantities and where applicable, showing taxable and non-taxable items and the GST inclusive price);
  - d) be a valid tax invoice pursuant to the requirements of the GST Act; and
  - e) specify bank account details for electronic payment.
- 3.4 Where the Supplier's tax invoice does not comply with this clause 3, the tax invoice must be reissued and the University will have no liability to pay the Supplier until 30 days in which the University receives a correctly rendered tax invoice.

#### 4. Variations

- 4.1 The University may vary the Goods or Services, and make any consequential amendments to the Purchase Order (including the price and Delivery Date) by reasonable prior written notice to the Supplier.

#### 5. Delivery, Packing and Packaging of Goods

- 5.1 Where the Purchase Order relates to Goods, the price specified on the Purchase Order includes packaging and delivery. The Supplier must package, deliver and unload the Goods in accordance with the Purchase Order and the University's reasonable instructions including, but not limited to, delivering Goods on the Delivery Date to the delivery location stated on the Purchase Order.
- 5.2 The Supplier will use suitable packaging and delivery methods (having regard to the nature of the Goods) to ensure the Goods are delivered in good condition and without damage.
- 5.3 The Supplier must provide a delivery advice with each delivery. All delivery advices must state the Purchase Order number. Where a delivery consists of more than one package each package shall be numbered consecutively and copies of delivery advices must be attached to the last package.

#### 6. Title, Risk and Insurance

- 6.1 Where the Purchase Order relates to Goods:
- risk in the Goods shall remain with the Supplier until such time the University takes delivery of the Goods; and
  - title in the Goods shall pass to the University on the first to occur of (1) delivery of the Goods in accordance with the Purchase Order and these terms and conditions; or (2) payment by the University of the relevant Purchase Order.
- 6.2 The Supplier must effect and maintain, and ensure any subcontractor effects and maintains, insurance policies that a prudent person supplying and delivering the Goods and/or Services would obtain and maintain, including, without limitation, public liability insurance for not less than \$20 million per claim, workers compensation in the amount required by law and, in the case of Services (where applicable), professional indemnity insurance for not less than \$10 million per claim and in the case of Goods, insurance policies for goods in transit and (where applicable) product liability insurance. On request, the Supplier must provide evidence of currency of its insurances to the University.

#### 7. Inspection testing

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 four month period of inspection, testing, acceptance or rejection by the University

#### 8. Hazardous Substances

Where the Supplier knows, or ought to know, that it is supplying hazardous substances to the University, it must comply with any relevant regulations in relation to those substances.

#### 9. Warranties

- 9.1 The Supplier warrants the Goods and/or Services will:
- be supplied in a good and workmanlike manner and using the standards of relevant skill, care and diligence as expected from a qualified and competent supplier of such goods and/or services.
  - accord with the requirements and specifications on the Purchase Order, or other relevant document;
  - be free from defects in design, materials and workmanship;
  - be of acceptable quality;
  - be fit and proper for their usual purpose;
  - be accompanied by all relevant, accurate and up to date information (e.g. instructions, warranties, product descriptions);
  - be free from all encumbrances or adverse interests, and the Supplier has all rights, title, interests and property necessary to provide the Goods and Services; and
  - comply with all applicable New South Wales and Commonwealth laws, legal requirements, regulations, Australian Standards, codes and statutes.

#### 10. Modern Slavery

- 10.1 In performing its obligations under this Agreement, the Supplier shall and shall ensure all of its agents, contractors and sub-contractors:
- comply with the provisions of the Modern Slavery Act; and
  - take reasonable steps to ensure that there is no Modern Slavery in their supply chains or in any part of their business.
- 10.2 The Supplier represents and warrants that:
- it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act; and
  - neither the Supplier, nor any of its officers, employees or other persons associated with the Supplier:
    - has been convicted of any offence involving Modern Slavery; and
    - having made reasonable enquiries, to the best of its knowledge has been or is the subject of any investigation, inquiry or enforcement proceedings by any Governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.
- 10.3 The Supplier shall implement due diligence procedures for its own Supplier agents, contractors and sub-contractors, and other participants to ensure that there is no Modern Slavery in its supply chains.
- 10.4 The Supplier shall notify the University as soon as it becomes aware of any actual or suspected Modern Slavery in any part of its business, or in a supply chain, which has a connection with this Agreement.

#### 11. Ownership of Intellectual Property Rights

- 11.1 The Supplier warrants that it owns or has otherwise obtained an appropriate licence over all Intellectual Property Rights necessary to supply the Goods and/or Services and to ensure the University has the full benefit of the Goods and/or Services.
- 11.2 Unless otherwise stated in the Purchase Order, where the University contracts with the Supplier to acquire Goods and/or Services which, by their nature have been prepared and created specifically for the University and are not available to the general public, the University shall own all Intellectual Property Rights created by the Supplier in the course of and for the purpose of fulfilling the Purchase Order.

- 11.3 For the purposes of clause 11.2, the Supplier:
- a) presently assigns to the University all existing and future Intellectual Property Rights in or for the Goods and/or Services created by the Supplier or its personnel in fulfilling the Purchase Order; and
  - b) acknowledges that by virtue of this clause, all such existing rights are vested in the University, and, on their creation, all such future rights will vest in the University.
- 11.4 The Supplier, at its own cost, must do all things reasonably requested by the University to enable the University to secure the rights assigned under this clause 11.

## 12. Termination

- 12.1 The University may at any time before delivery, change or cancel the Purchase Order. If the Supplier has already incurred expense in arranging the order or delivery of the Good and/or Services, the University agrees to pay for the Supplier's reasonable costs or expenses incurred.
- 12.2 The University may cancel a Purchase Order immediately by written notice to the Supplier if:
- a) the Supplier has failed to supply the Goods and/or Services in accordance with the Purchase Order;
  - b) the Supplier commits a breach of any of these terms and conditions and has failed to remedy the breach within 7 days of receipt of a written notice from the University specifying the breach;
  - c) the Supplier being a company, becomes insolvent as defined in the *Corporations Act 2001* (Cth); or
  - d) the Supplier, being an individual, commits an act of bankruptcy as defined in the *Bankruptcy Act 1966* (Cth).
- 12.3 The Supplier may cancel a Purchase Order in the event the University commits a breach of these terms and conditions and fails to remedy that breach within 7 days of receipt of a written notice from the Supplier specifying the breach.
- 12.4 To the extent permitted by law, neither party shall make a claim against the other party in respect of any loss of profits that arise as a result of the cancellation of a Purchase Order under this clause 12.

## 13. Indemnity

- 13.1 To the fullest extent permitted by law, the Supplier indemnifies the University and its personnel against any liability, claim, action, loss, damage, cost or expense (including legal costs), arising as a result of:
- a) a breach by the Supplier of these terms and conditions; or
  - b) any negligent, fraudulent or wilful act or omission in the performance of the Goods and/or Services by the Supplier, its employees, servants or agents, except to the extent that any loss or damage is directly attributable to the University's negligent act or omission. . This indemnity is a continuing obligation of the Supplier and will survive the cancellation of a Purchase Order and termination or expiry of these terms and conditions.

## 14. Privacy

The Supplier must handle Personal Information in accordance with the *Privacy and Personal Information Protection Act 1998* (NSW) and *Health Records and Information Privacy Act 2002* (NSW including the Information Privacy Principles and Health Privacy Principles and any code of practice or guidelines made under these Acts, and must use reasonable endeavours to co-operate with all efforts by the University to comply with these laws, codes and guidelines, including in response to a complaint or a suspected privacy breach.

## 15. Time is of the essence

Time shall be of the essence in the performance of the Supplier's obligations under the Purchase Order and these terms and conditions (unless the failure to perform any obligations on time is caused by an act or omission of the University).

## 16. Governing law

These terms and conditions and the rights and obligations of the University and the Supplier must be construed in accordance with, and governed by, the laws of New South Wales. The parties agree to submit to the jurisdiction of the courts in the state of New South Wales.

## 17. Dispute Resolution

The parties agree to cooperate and act in good faith to resolve any disputes arising from the Purchase Order or these terms and conditions before any dispute is submitted to a Court in the State of New South Wales.

## 18. Notices

All written notices made under these terms and conditions may be served personally, via email, or sent by express post to the address of the Contact Person noted on the Purchase Order, at the Delivery Address noted on the Purchase Order.