

Curtin University Purchase Order Terms and Conditions (“Terms and Conditions”)

CURTIN UNIVERSITY’S PURCHASE ORDER TERMS AND CONDITIONS SHALL BE THE PREVALENT AND DOMINANT TERMS OF PURCHASE FOR THE PURCHASE OF GOODS AND / OR SERVICES.

1. General

- 1.1 These Terms and Conditions apply to the order for goods or services placed by Curtin University, a body corporate established under the Curtin University Act (**the University**) with the supplier as identified on the Purchase Order (**the Supplier**).
- 1.2 These Terms and Conditions are to be read 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:
 - a) the University first provides its agreement in writing; or
 - b) the University enters into a longer form agreement on the University’s terms and conditions in which case the terms and conditions of that agreement will apply between the University and the Supplier.
- 1.3 No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by the University and the Supplier.

2. 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.
- 2.2 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 University and the Supplier.
- 2.3 Any term or condition on Supplier’s forms shall be deemed to be deleted and not be deemed to be of legal force or effect upon the University. Acceptance of materials, work or services, payment or any inaction by the University shall not constitute the University’s consent to or acceptance of any such terms.

3. Cancellation

- 3.1 The University may at any time before delivery cancel the Purchase Order by written notice to the Supplier.
- 3.2 Under such circumstances, the University’s liability shall be limited to payment of the amount due for work performed up to and including the cancellation date.

4. Fees and Invoices

- 4.1 In consideration for the provision of goods and/or services under the Agreement, the University agrees to pay to the Supplier the **Fees** specified in the Purchase Order upon the presentation of a tax compliant invoice showing the Purchase Order number or other client reference details.
- 4.2 Unless otherwise specified in the Purchase Order, the University agrees to pay the Supplier the Fees within 30 days from the end of the month in which the invoice is received and accepted by the University.

5. Subcontracting and Assignment

- 5.1 Except as expressly provided in the Purchase Order, the Supplier may not subcontract any obligations under the Agreement without the prior written consent of the University. Where the Supplier subcontracts any of its obligations under the Agreement, the Supplier remains

liable for the carrying out and completion of those obligations.

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

6. Indemnity, Insurance and Warranties

- 6.1 The Supplier indemnifies the University, including its officers, employees and agents, against all Losses it directly or indirectly sustains or incurs as a result of:
 - a) any negligent, unlawful or wilful act or omission of the Supplier or Supplier personnel;
 - b) 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;
 - c) 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 relevant liability.

Losses means actions, claims, liabilities, expenses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

IPRs means all registered and unregistered rights in relation to the present and future copyright, trademarks, designs, know-how, patents, confidential information and other intellectual property.

- 6.2 The Supplier shall effect and maintain through the term of the Agreement the following:
 - a) Worker’s Compensation Insurance as required by law; and
 - b) Public and Products Liability Insurance of at least \$10,000,000 for any one occurrence, including a waiver of subrogation and contractual liability.

The Supplier must ensure that any subcontractor engaged by it is insured to a level commensurate with the insurance obligations of the Supplier under the Agreement.

- 6.3 The Supplier represents and warrants that:
 - a) it has all rights, title, licences, interests and property necessary to provide the goods and/or perform the services;
 - b) the Supplier personnel will have all necessary skill, knowledge and competence to perform the services;
 - c) the goods and/or services will be fit for the purposes intended;
 - d) if applicable, the goods and/or services will meet any agreed design and performance criteria and correspond with any sample;
 - e) the goods will be complete, accurate and free from material faults in design and free from defects in materials, workmanship and installation;
 - f) the goods supplied and their packaging will comply with all statutory laws and regulations and any codes of practice and Australian Standards that may be applicable;
 - g) as far as it is aware it is entitled to licence any IPRs transferred to the University under the Agreement;
 - h) the University’s use of any Pre-Existing IPRs and/or Developed IPRs in the goods and/or services

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(Warranted Materials) will not infringe the IPRs of any person; and

- 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.
- 6.4 If a third party claims, or the University reasonably believes that a third party is likely to claim, that all or part of the Warranted Materials infringe their IPRs or breach their confidence, the Supplier must, in addition to the indemnity under the Agreement and to any other rights that the University may have against it, promptly, at the Supplier's expense:
- a) use its best efforts to secure the rights for the University to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
 - b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the IPRs of any other person without any degradation of the performance or quality of the affected Warranted Materials.
- 6.5 To the full extent permitted by law goods and services not meeting the warranties will be, at the University's option, returned for a refund, repaired or replaced at no cost to the University and with transportation costs and risk of loss and damage in transit borne by the Supplier. Repaired and replaced goods shall be warranted in accordance with the Agreement.

7. Intellectual Property Rights and Confidential Information

- 7.1 All rights, title and interest in any IPRs created in providing the goods and/or services (**Developed 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 Developed IPRs to the University.
- 7.2 The IPRs owned by a party prior to the date of the Agreement (**Pre-Existing IPRs**) remain with the contributing party.
- 7.3 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 Pre-Existing IPRs in conjunction with the goods and/or services, and the Developed IPRs.
- 7.4 Each party must keep any Confidential Information disclosed to it confidential and must not deal with it in any way that may prejudice its confidentiality. These obligations continue indefinitely beyond the end of the Agreement, but do not extend to disclosures to a party's officers or employees:
- a) who have a need to know for the purposes of the Agreement (but only to the extent that each has a need to know); and
 - b) before disclosure, have been directed by the party to keep that Confidential Information confidential.

Confidential Information means all data and/or information exchanged between the parties for the purposes of the Agreement before, on or after the date of the Agreement relating to the operations, business, research and technology of the disclosing party.

8. Onsite Work

- 8.1 The Supplier shall become acquainted with conditions governing the delivery, receipt and storage of goods at the site of the work so that the Supplier will not interfere with the University's operations. Storage space will not

necessarily be provided adjacent to the site of the work. Therefore, the Supplier shall be expected to select, uncrate, remove and transport materials from the storage areas provided. The University is not responsible for the safekeeping of the Supplier's property on the University premises.

- 8.2 The Supplier shall not stop, delay or interfere with the University's work schedule without the prior approval of the University's Representative. The Supplier shall provide and maintain sufficient covering and take any other precautions necessary to protect the University's stock, equipment and other property from damage due to the Supplier's performance.
- 8.3 If the Supplier is required to provide any services within any lands or buildings owned or occupied by the University, then the Supplier must observe the University's statutes, rules, by-laws and policies which are downloadable from the following website: <http://www.policies.curtin.edu.au/home/>.

9. Miscellaneous

- 9.1 The University may terminate the Agreement by written notice to the Supplier:
- a) if the Supplier breaches a term of the Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so; or
 - b) if the Supplier is, or becomes, subject to proceedings which may result in the Supplier becoming bankrupt, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.
- 9.2 The Agreement is governed by the law in force in Australia and the State of Western Australia and the Supplier agrees to submit to the non exclusive jurisdiction of the courts of Western Australia.
- 9.3 The obligations of the parties under the Agreement, which by their nature would continue beyond the termination, cancellation or expiration of the Agreement, shall survive termination, cancellation or expiration of the Agreement.
- 9.4 The University reserves the right to retain other persons or entities to supply the goods and/or services including, but no limited to, any part of the goods and/or services.
- 9.5 Except as expressly permitted in the Agreement, neither party shall hold itself as being:
- a) a servant or agent of the other party; or
 - b) authorised to enter into any contract on behalf of the other party.
- 9.6 The Supplier will ensure that any hazardous material delivered to the University is correctly labelled and a material safety data sheet (MSDS) is provided to the buyer.
- 9.7 If there is an inconsistency between a provision in:
- a) any terms and conditions contained in the Purchase Order;
 - b) any terms and conditions contained in any attachment to the Purchase Order;
 - c) a longer form University contract entered into between the Supplier and the University for the goods and/or services described in the Purchase Order; and
 - d) these Terms and Conditions,
- then the first-mentioned terms shall prevail in the order set out above.
- 9.8 The Supplier will comply with:

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- (a) All relevant State and Federal laws in relation to the performance of this Agreement; and
- (b) Discharge its obligations under this Agreement and perform the Services in accordance with the University’s Code of Conduct, Values and applicable policies, including without limitation Health and Safety Policies.