

UNIVERSITY OF WAIKATO TERMS AND CONDITIONS OF PURCHASE

1. Definitions and interpretation

1.1 In this Agreement:

"Agreement" means these terms and conditions of purchase and the Purchase Order.

"Confidential Information" means all information of any kind provided by a party to the other party relating to or in connection with the supply of the Products and/or Services by the Supplier including without limitation the Purchase Order and the contents of this Agreement.

"Delivery Date" means the delivery date set out in the Purchase Order or as otherwise agreed between the parties from time to time.

"Intellectual Property" means all statutory, common law and other proprietary rights in respect of patents and applications for patents, trademarks, trade names, know-how, copyright, designs, trade secrets, inventions, systems, data, information, computer graphics, records and any other intellectual property.

"New Intellectual Property" means any Intellectual Property created or existing as a result of or in connection with the supply of the Products and/or Services pursuant to this Agreement.

"Products" means the products to be supplied by the Supplier to the University as set out in the Purchase Order.

"Purchase Order" means a purchase order provided by the University to the Supplier for the purchase of Products and/or Services from time to time.

"Purchase Order Number" means the order number set out in the Purchase Order.

"Services" means the services procured by the University from the Supplier from time to time as set out in the Purchase Order.

"Supplier" means the supplier named in the Purchase Order.

"University" means the University of Waikato a tertiary institution at Hamilton.

"Working Day" means a day other than a Saturday, Sunday or public holiday in New Zealand.

2. Agreement and supply

2.1 The Supplier agrees to supply the Products and/or Services to the University.

2.2 The University may submit to the Supplier a Purchase Order for the particular Products and/or Services it requires from time to time.

2.3 Supply of the Products and/or Services by the Supplier shall constitute acceptance of the terms and conditions set out in this Agreement.

2.4 The Supplier shall only supply the Products and/or Services ordered. The Supplier may only supply alternate or differing Products and/or Services from those set out in the Purchase Order with the prior written approval of the University. The Supplier shall provide specifications and/or samples of alternatives if so requested by the University.

3. Risk and property

3.1 Risk of loss, damage or deterioration to the Products and/or Services from any cause whatsoever shall remain with the Supplier and shall not pass to the University until delivery of the Products ordered to the place of delivery designated in the Purchase Order. Title to the Products ordered shall remain with the Supplier until the University has made payment for the Products in full.

4. Delivery

4.1 The Supplier shall deliver the Products to the address specified in the Purchase Order, on or, where appropriate in the circumstances, before the Delivery Date and in accordance with all other instructions or specifications set out in the Purchase Order. In the absence of any such instructions, the Supplier must comply with best commercial practice to ensure safe arrival at the destination point within a reasonable time.

4.2 The Supplier shall deliver the Products free in store unless otherwise specified by the University in writing.

4.3 The Supplier shall ensure that all deliveries of Products are accompanied by a delivery docket containing the Purchase Order Number, the name of the person who placed the Purchase Order, the invoice number, a description of the Products supplied, the price of the Products and all other relevant information relating to the supply of the Products by the Supplier.

4.4 The Supplier shall insure the Products until delivered to the University.

5. Price and payment

5.1 The University shall pay the Supplier for the Products and/or Services ordered at the price set out in the Purchase Order, or as otherwise agreed by the parties.

5.2 The Supplier shall provide the University with an invoice in respect of the Products and/or Services supplied. All invoices provided by the Supplier to the University shall quote the Purchase Order Number and any other information requested by the University from time to time.

5.3 All invoices shall be scanned and emailed to: uow-accounts payable@paperlessap.co.nz

Or posted to:

Accounts Payable
The University of Waikato
PO Box 31-695
Lower Hutt Wellington
5040

5.4 Subject to clause 5.6, the University shall pay the Supplier by the 25th day of the month following the month the Products and/or Services were delivered and/or performed.

5.5 Provided the University informs the Supplier of a genuine and reasonable dispute about any purchase or transaction, the University may withhold payment of the disputed portion of the price until that dispute is resolved by the parties, or failing this, until there is a resolution in accordance with clause 14.

5.6 The University may deduct from, and set off against, any payments due to the Supplier any credits, discounts and other amounts from time to time owing to the University by the Supplier.

7. Warranties

7.1 The Supplier warrants and guarantees to the University that:

(a) the Products:

- (i) Are free from defects in material and workmanship and are of merchantable quality;
- (ii) Are of good material and workmanship and are fit for the purpose for which they are intended;
- (iii) Comply with any samples or specifications given or agreed to by the University; and
- (iv) Are free from any mortgage, charge, lien or other encumbrance;

(b) The Services will be performed professionally and in accordance with industry best practice.

8. Defective Products and/or Services

8.1 If any Products and/or Services supplied pursuant to this Agreement:

- (a) Do not meet any quality or other specifications set out in the Purchase Order and/or this Agreement;
- (b) Are not supplied on or before the Delivery Date;
- (c) Are supplied in breach of any term or warranty contained within this Agreement;
- (d) Are supplied in breach of any statutory or other duty imposed by law; or
- (e) Are supplied negligently or recklessly;

The University may (in its absolute discretion, and without prejudice to any of its other rights and remedies) take any of the actions set out in clause 8.2.

8.2 In the event of any of the circumstances described in clause 8.1, the University may without prejudice to its other rights and remedies do all or any of the following (where the context allows):

- (a) Reject or return any Products at the cost of the Supplier. The Supplier shall immediately upon the rejection of the Products being brought to its attention, repay any monies paid by the University in respect of such Products. The defective Products shall immediately upon the rejection being brought to the Supplier's attention become the property of, and be held at the risk of the Supplier;
- (b) Require the Supplier to repair or make good any defects in the Products and/or Services to the University's satisfaction within a reasonable time of the relevant defect being brought to the Supplier's attention by the University at the Supplier's cost;
- (c) In respect of any defective Services procure a third party to:
 - (i) remedy or fix any damage caused to any property of the University; and
 - (ii) do any work to return the University to the position it would have been in without the supply of the Services in question;
- (d) Terminate without liability the Purchase Order in relation to such Products and/or Services by notice to the Supplier. In such instance, the University may purchase substitute Products and/or Services elsewhere and charge the Supplier any loss incurred.

8.3 In the event of any of the circumstances described in clause 8.1, the Supplier shall pay all losses (excluding loss of profit, loss of business opportunity), costs (including full costs between solicitor and client) or liabilities suffered by the University arising out of or flowing from the Supplier's failure to

comply with its obligations under clause 8.1 including all costs incurred in respect of the actions set out in clause 8.2.

9. Compliance with laws

- 9.1 The Supplier shall comply with all laws, statutes, regulations, by-laws, ordinances and other obligations relating to the supply of the Products and/or Services to the University pursuant to this Agreement including without limitation the provisions of the Resource Management Act 1991 and the Health and Safety at Work Act 2015. Supplier's (sales, exchange, lease, hire or hire purchase) must provide health and safety information about their product to the University.

10. Electronic Purchasing System

- 10.1 The University uses an electronic purchasing system. The Supplier agrees to comply with any terms and conditions of use of the system and any other requirements of the University as notified by the University in respect of the system.
- 10.2 The Supplier shall not:
- (a) Post false, inaccurate, misleading or defamatory content on the electronic purchasing system;
 - (b) Distribute or otherwise post spam content on the electronic purchasing system or to University email addresses;
 - (c) Knowingly (whether directly or indirectly) distribute viruses or other technologies that may impair or negatively affect the electronic purchasing system, the University, its staff or other suppliers; nor
 - (d) Offer gifts or other inducement to the University or any of its employees to encourage them to purchase the Supplier's Products and/or Services.

11. Relationship

- 11.1 The parties agree that nothing within this Agreement will create any relationship of employment, agency, partnership or joint venture between the University and the Supplier.

12. Confidentiality

- 12.1 The parties shall keep and maintain all Confidential Information of each other and shall not use, disclose or otherwise provide the Confidential Information to any third party without the other party's prior written consent. Where disclosure of the Confidential Information to employees or agents of a party is required in order to supply the Products and/or Services to the University, the parties shall ensure that such employees and agents are bound by equivalent obligations of confidentiality and non-use as set out in this Agreement.

13. Intellectual Property

- 13.1 The Parties agree and acknowledge that all Intellectual Property belonging to or licensed to a party is the sole property of that party and that nothing within this Agreement will give the other party any right, title or interest in such Intellectual Property.
- 13.2 The parties agree that all New Intellectual Property shall be the sole property of the University and that the Supplier shall have no right, title or interest in such New Intellectual Property unless otherwise agreed.
- 13.3 If requested by the University, the Supplier shall execute all documents and do all things necessary to give effect to the University's ownership of the New Intellectual Property.

14. Dispute Resolution

- 14.1 Any dispute arising between the parties relating to the supply of the Products and/or Services or otherwise in relation to the terms of this Agreement shall in the first instance be dealt with by each party promptly giving notice of such dispute to the other in writing. The parties shall endeavour to resolve the dispute in good faith prior to seeking resolution through the Courts.

15. Limitation of liability

- 15.1 Notwithstanding anything set out in this Agreement, the University will be under no liability whatsoever to the Supplier for any indirect loss, consequential loss or damage, loss of profit, loss of bargain, loss of business opportunity or exemplary damages or losses suffered by the Supplier or any other person arising out of or flowing from any pre-contractual misrepresentation, forecast or breach of this Agreement, or other dispute arising out of these terms, whether contemplated by this Agreement or not, and whether actionable in tort (including negligence) equity or otherwise.
- 15.2 Notwithstanding anything else in this Agreement, in the event that the University is found liable under this Agreement for any reason whatsoever (including the loss set out in clause 15.1), such liability will be limited to the price of the specific Products and/or Services that the liability relates to and shall be inclusive of all claims made against the Supplier under this Agreement.

16. Indemnity

- 16.1 The Supplier shall indemnify the University against all costs (including full costs between solicitor and client), claims, liabilities, expenses and demands suffered or incurred by the University arising out of or relating to the supply of the Products and/or Services by the Supplier pursuant to this Agreement.

17. Notices

- 17.1 Any notices required to be given by the parties pursuant to this Agreement shall be given at the addresses set out in the Purchase Order or as otherwise notified in writing by the parties from time to time.

18. Force Majeure

- 18.1 No failure or omission by any party to carry out or observe the terms and conditions of this Agreement will give rise to any claim against the party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of such party provided that this clause will not extend to excuse the consequences of insolvency or financial difficulty.

19. General

- 19.1 No failure by a party to enforce any of its rights under this Agreement shall be considered a waiver of those rights and no failure to enforce any subsequent breach of this Agreement shall be considered a waiver of those rights in respect of a subsequent breach of any term or condition of this Agreement.
- 19.2 If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity.
- 19.3 No amendment or variation of this Agreement shall be binding unless it is in writing and signed by both parties.
- 19.4 The Supplier may not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of the University.
- 19.5 This Agreement is to be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.