

1. THE CONTRACT

The relevant Purchase Order form ("PO"), the Schedule (if any), and these PO Terms and Conditions ("PO Terms"), together comprise the entire binding Purchase Order contract ("PO Contract") between Adelaide University and the Supplier named in the PO (or Schedule if any) ("Parties") for the sale and purchase of the Goods and/or Services. A confirmation of acceptance of the PO by the Supplier or the provision of any of the Goods and/or Services by the Supplier (whichever is earlier) is deemed acceptance of this PO Contract by the Supplier. Any terms and conditions of the Supplier (whether or not provided to the University) do not apply to this PO Contract and are irrevocably waived by the Supplier. Where the PO is issued pursuant to an existing separate contract between the Parties then the terms of that contract will apply instead of these PO Terms. For the purpose of this PO Contract, "Schedule" means a Purchase Order Schedule agreed between the Parties (in writing, including by email exchange) in relation to the provision of the Goods and/or Services under this PO Contract; "Goods" means the goods, materials or deliverables if any specified in the PO (or Schedule where applicable) and "Services" means any services specified in the PO (or Schedule where applicable) or otherwise related or incidental to the provision of the Goods.

2. AGREEMENT TO SUPPLY

The Supplier will supply to the University the Goods and/or Services for the Price, and in accordance with the description and any requirements, obligations and warranties, set out in the PO (or Schedule where applicable). The Supplier is solely and vicariously liable and responsible for the acts or omissions of any of the subcontractors, consultants or other people engaged by the Supplier to act in connection with this PO Contract or the supply of the Goods or Services ("Relevant Person"). To the extent that any Relevant Person fails to take reasonable care in connection with this PO Contract:

- the Relevant Person will be deemed to have acted as the agent of the Supplier; and
- the Supplier will be directly and vicariously liable to the University for any such failure to take reasonable care.

3. SUPPLIER'S GOODS DELIVERY OBLIGATIONS

The Supplier must at its cost safely and securely pack, and correctly label, the Goods including with an externally accessible delivery docket, and deliver them in the quantity specified in this PO Contract, to the University's delivery address, on or before the delivery date (or other delivery timing), and in accordance with any delivery instructions in the PO (or Schedule where applicable).

The Supplier must supply the Goods with all necessary/relevant operational, safety, and data materials and documents. Goods which are or contain hazardous chemicals as defined under South Australian work health and safety legislation must be correctly classified, labelled and packed in accordance with that legislation and be supplied with safety data sheets.

4. GOODS OWNERSHIP AND RISK

The Sale of Goods (*Vienna Convention Act 1986* (SA)) is excluded and will have no effect on the terms of this PO Contract. Title in the Goods passes to the University on the earlier of the delivery of the Goods in accordance with the PO (or Schedule where applicable) or payment by the University to the Supplier of the Price. Risk in the Goods passes to the University when the Goods are delivered by the Supplier to the University in accordance with the PO (or Schedule where applicable).

The Supplier is responsible for loss of or damage to any Goods or Services in the care, custody and control of the Supplier (including during transit or storage by the Supplier or its contractor), of whatsoever nature and howsoever caused, occurring prior to the date when the Goods are delivered to the University, or the date when the Services are provided to the University.

In the event of loss of or damage to any Goods in the care, custody and control of the Supplier, the University will have the right to take (or engage a third party to take), or require the Supplier to take, such measures as the University deems necessary to reconstruct, repair, replace or remediate the same. All costs and expenses involved in taking any or all of the measures referred to in this clause 4 will be a debt due and payable by the Supplier to the University.

The Supplier must not store the Goods at any location or site owned or controlled by a third party without the prior written consent of the University (which may be given in its absolute discretion and subject to conditions required by the University, including that third party having entered into a third party access deed).

The Supplier will be entitled to the reasonable costs for storage for the period it stores the Goods pursuant to a written direction by the University under this clause 4 if not covered by the Price.

The Supplier agrees that:

- the University may have a mortgage, pledge, encumbrance, lien or charge or any security or preferential interest or arrangement of any kind (whether registered or not) ("Security Interest") over the Goods;
- it will not do anything (or permit anything to be done) to adversely affect the University's Security Interests over the Goods; and
- it will do everything the University reasonably requires to ensure the University's Security Interests are protected.

5. SUPPLIER'S GOODS WARRANTIES

The Supplier warrants that the Goods and any materials or deliverables supplied with them:

- are new and free from defects in design, materials and manufacture;
- conform with the description, specifications and performance criteria set out in the PO (or Schedule where applicable);
- conform to all applicable Australian standards;
- are of merchantable and acceptable quality and fit and suitable for their intended purpose;
- are unencumbered and free from any security interest, hostile title claim or any lien; and
- do not infringe any person's intellectual property rights.

These warranties are in addition to any warranty or guarantee provided by the Supplier in respect of the Goods or conferred or implied by law.

6. WARRANTY FOR DEFECTIVE GOODS

If after inspection, testing, and/or use of the delivered Goods, the University reasonably determines that the Goods fail to comply with any of the Supplier's warranties in clause 5 ("Defective Goods") the University will notify the Supplier in writing. The warranty period in respect of the Goods is 12 months from the date of the delivery of the Goods to the University unless otherwise agreed in any Schedule ("Warranty Period").

During the Warranty Period the University may elect in its discretion to require the Supplier to either replace, repair or refund the Price of any Defective Goods in accordance with any agreed warranty response times or if no such times are agreed then as soon as possible at the Supplier's expense.

If the Supplier is required by the University to replace or repair Defective Goods, then the warranties in clause 5 will apply to those replacement or repaired Goods and the full Warranty Period will recommence from the date of replacement or repair.

The Supplier must ensure that the University receives the full benefit of any manufacturer's warranty in respect of the Goods and agrees to assign to the University the benefits of any warranties given by third parties. Such assignment is in addition to the warranties offered directly by the Supplier in these PO Terms and does not relieve the Supplier from the obligation to comply with the Supplier's own warranties.

7. SUPPLIER'S SERVICES WARRANTIES

The Supplier warrants that the Services will be provided:

- to the satisfaction of the University, cost effectively, safely, and within the time specified in the PO (or Schedule where applicable);
- in a professional and competent manner, with due care and skill, and in accordance with all reasonable directions of the University;
- by suitably qualified and experienced personnel;
- in conformance with the description, specifications, plans, drawings and performance criteria set out in the PO (or Schedule where applicable);
- in conformance with all accepted industry, and applicable Australian, standards; and
- without interfering with the University's activities or infringing any person's intellectual property rights.

If any of the Services fail to comply with the warranties in this clause 7, the University may by notice in writing to the Supplier elect in its discretion to reject the defective Services and require the Supplier to either re-perform the Services or refund the Price of the defective Services at the Supplier's cost.

8. SUPPLIER'S CONDUCT

The Supplier must, in performing this PO Contract:

- obtain at its cost all necessary licences, approvals, and consents;
- comply with all laws, and all policies of the University applicable to the Supplier's provision of the Goods and/or Services;
- comply with the University's [Supplier Code of Conduct](#); and
- notify the University immediately of any event of which it becomes aware that may delay the provision of the Goods and/or Services.

9. INTELLECTUAL PROPERTY

All intellectual property rights created in the course of the performance of this PO Contract are, from the time of the creation of those rights, owned by the University. The Supplier also grants to the University a perpetual, assignable, royalty free licence to use any of the Supplier's pre-existing intellectual property rights in any Goods or associated material or documents to the extent necessary to allow the University the full use and enjoyment of those Goods.

10. PRICE

In consideration for the provision of the Goods and/or Services, the University will pay the price specified in the PO (or Schedule where applicable) ("Price"). Subject to clause 11, the Price is all inclusive and includes without limitation all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this PO Contract and all of the Supplier's costs.

11. GOODS AND SERVICES TAX ("GST")

The Supplier represents that it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth) and has an Australian Business Number.

If the Price is expressed as being GST exclusive then the University will pay GST in addition to the Price if the supply of the Goods and/or Services constitutes a taxable supply.

12. PAYMENT ARRANGEMENTS

The University will pay the Supplier the Price only on receipt of a properly rendered invoice from the Supplier after the date on which the Goods and/or Services have been provided. An invoice is properly rendered if it is sent to au_invoices@adelaide.edu.au, is correctly addressed to the University, fully describes the Goods and/or Services to which the invoice relates, reflects the correct Price under the PO (or Schedule where applicable), is a valid Tax Invoice within the meaning of the GST Law; and complies with any other requirements stipulated in the PO (or Schedule where applicable).

The University will pay the Price within 30 days from the date on a properly rendered invoice from the Supplier.

The Parties agree that the making of a payment is payment on account only and is not intended to be an acknowledgement that the Goods and/or Services have been provided in accordance with this PO Contract.

If the University disputes an invoice amount the University will notify the Supplier and will pay any amount not in dispute (and if requested by the University, the Supplier will cancel the disputed invoice and issue a new invoice for the amount not in dispute). Once the dispute is resolved, the University will pay any further amount which the University and the Supplier have agreed is owed by the University to the Supplier (and if requested by the University, the Supplier will issue an invoice for any such further amount).

The University may deduct from amounts otherwise payable to the Supplier by the University, any amount due from the Supplier to the University or any claim to money which the University may have against the Supplier on any account whatsoever.

13. INDEMNITY AND INSURANCE

The Supplier indemnifies, and will keep indemnified, the University against all actions, claims, demands, costs, losses, damages and expenses whatsoever suffered by the University in any way related to the Supplier's failure to supply the Goods and/or Services in accordance with this PO Contract, breach of the PO Terms, or a negligent act or omission of the Supplier, except to the extent caused by the negligence or default of the University.

Neither Party will be liable to the other Party for any indirect, special or exemplary loss or damage or for any loss of revenue or profit, or loss of use or production, except the Supplier's liability is not limited for any liability which cannot be limited at law, wilful misconduct, any claims for personal injury or death or loss of, or damage to property, third party claims for infringement of intellectual property or breach of confidentiality obligations.

The Supplier must hold all insurance policies required by law, including for any storage and transit of the Goods, and in addition, a public and products liability insurance policy for a minimum amount of \$10m. If Services are being provided the Supplier must also hold a professional indemnity policy for a minimum amount of \$5m.

Any insurances the Supplier is required to hold under this PO Contract must be held until the Goods and/or Services are delivered in accordance with this PO Contract.

The Supplier will at the request of the University provide certificates of currency for the above insurances.

14. TERMINATION

The University may terminate this PO Contract immediately and without liability to the Supplier by written notice to the Supplier if the Supplier:

- fails to deliver the Goods or Services within 5 days of the date for delivery of the Goods or Services specified in the PO (or Schedule where applicable);
- breaches any material clause of this PO Contract or conducts itself in a manner which may cause material damage to the interests or reputation of the University;
- breaches any term of this PO Contract and fails after receiving notice by the University, to remedy that breach; or
- commits a material breach of the *Modern Slavery Act 2018* (Cth).

The University may at its convenience terminate this PO Contract by written notice to the Supplier at any time within 2 business days of issuing the PO without liability to the Supplier.

If this PO Contract is terminated:

- the Supplier will have no further entitlements to any payments; and
- the Supplier will provide access (and ensure access is provided by any third parties) to any locations to allow the University to recover (and must comply with the University's reasonable directions in relation to) any Goods it has title to in accordance with clause 4.

Any termination of this PO Contract by the University does not affect any accrued right of either Party and the rights and liabilities of the Parties will be the same as they would have been at common law had the defaulting Party repudiated this PO Contract and the other Party elected to treat this PO Contract as at an end and recover damages.

15. SPECIFIC LEGISLATIVE REQUIREMENTS

The Supplier acknowledges that:

- the supply of Goods and/or Services may involve public administration for the purposes of the *Independent Commission Against Corruption Act 2012* (SA) and the *Ombudsman Act 1972* (SA) and that the University may be subject to investigation by the Office of Public Integrity or by the office of the Ombudsman. The Supplier must ensure compliance with all obligations arising under those Acts.
- the University is an "agency" for the purpose of the *Freedom of Information Act 1991* (SA) and is responsible for making available information requested in accordance with that Act.

If requested by the University, the Supplier must provide evidence satisfactory to the University of its compliance with the *Work Health and Safety Act 2012* (SA) and that its personnel have received appropriate training in and are aware of their legal obligations and responsibilities in relation to work health and safety.

In performing this PO Contract the Supplier will comply with the *Modern Slavery Act 2018* (Cth) and will notify the University as soon as it becomes aware of any actual or suspected "Modern Slavery" (as defined in section 4 of the Act) in a supply chain which has a connection with this PO Contract.

16. DISPUTE

Any dispute between the Parties arising under this PO Contract must be referred to suitably authorised representatives of each of the Parties for negotiation. If the dispute is not resolved within 21 days of referral then either Party will be at liberty to litigate the dispute.

17. MISCELLANEOUS

This PO Contract (or any part of it) may only be varied with the written agreement of both Parties. Any amendment or addition to these PO Terms, described in the PO (or Special Conditions set out in the Schedule where applicable) shall be considered as special conditions which shall take precedence over these PO Terms.

Terms of this PO Contract dealing with warranties indemnities and consequences of termination survive the termination or expiry of this PO Contract.

A Party's failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right.

Except by operation of law, neither Party may assign, subcontract, encumber or transfer any of its rights or obligations under this PO Contract without the prior written consent of the other Party such consent not to be unreasonably withheld.

This PO Contract is governed by the laws in the State of South Australia and the Parties submit to the jurisdiction of the courts in that State.