



## GENERAL CONDITIONS FOR THE SUPPLY OF GOODS

NOVEMBER 2020

### 1. Supply of Goods

- (a) The Supplier must supply the Goods to the University in accordance with the Specification and otherwise in accordance with the Agreement.
- (b) The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery.

### 2 Acceptance or rejection of Goods

- (a) If the Goods do not conform with the Specification or sample, or are damaged or defective, then the University may reject the Goods within 30 days of delivery by written notice giving reasons. If the University does not accept or reject the Goods within 30 days of delivery, acceptance will be deemed to have then occurred.
- (b) The Supplier must at its cost collect and remove any Goods that have been rejected as soon as practicable or the University may return the Goods to the Supplier at the Supplier's expense.

### 3 Invoicing and payment

- (a) The Unit Price is fixed and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.
- (b) The Supplier must submit to the University a Tax Invoice for the Purchase Price following the supply of the Goods, which must contain such information as the University may reasonably require and be sent to the address specified in the Agreement.
- (c) The University will pay the invoiced amount within 60 days of receipt of an accurate invoice. However, if the University disputes the invoiced amount then it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute.
- (d) Payment of an invoice is not to be taken as evidence that the Goods have been supplied in accordance with the Agreement or accepted, but must be taken only as payment on account.
- (e) The Unit Price is inclusive of GST unless there is a specific statement to the contrary in the Agreement.

### 4 Title and risk

Title and risk in the Goods will pass to the University upon acceptance of the Goods.

### 5 Warranties

- (a) The Supplier warrants to the University that it has the right to sell and transfer title to and property in the Goods to the University.
- (b) The Supplier warrants to the University that it has not breached any third party's Intellectual Property in the manufacture, preparation or sale of the Goods.

- (c) The Supplier warrants to the University that the Goods:

- (i) are new and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
- (ii) conform in all respects with the Specification;
- (iii) are free from defects (including defects in installation); and
- (iv) are of merchantable quality and comply with all Laws,

unless there is a specific statement to the contrary in the Agreement.

- (d) The Supplier must obtain the benefit of any manufacturer's warranties for the University unless there is a specific statement to the contrary in the Agreement.

### 6 Indemnity

The Supplier must indemnify the University and each of the University's employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a result of: (a) any unlawful or negligent act or omission of the Supplier or any of its employees, agents or contractors in relation to the supply of the Goods; (b) or any breach of the Agreement by the Supplier.

### 7 Insurance

- (a) Unless otherwise agreed in writing by the University, the Supplier must have public and products liability insurance with a sum insured of at least \$20m per claim. The Supplier must also have workers' compensation insurance to the extent required by law. The Supplier must maintain all such insurance for the duration of the Agreement and, in the case of claims-made policies, for seven years thereafter.
- (b) On request, the Supplier must provide the University with certificates of currency for any insurance required by clause 7(a).

### 8 Confidentiality

- (a) The Supplier and its employees, agents, directors, partners and consultants must not disclose or otherwise make available any Confidential Information to any other person and may only use Confidential Information for the purpose of supplying the Goods to the University.
- (b) Subject to clause 14(c), the Supplier hereby consents to the University publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods) as it determines.

## 9 Access

When entering the premises of the University, the Supplier must ensure that its employees, agents and contractors: (a) use reasonable endeavours to protect people and property and prevent nuisance; and (b) act in a safe and lawful manner; and (c) comply with any University safety standards, requirements and policies (e.g. participating in an induction) as advised by the University.

## 10 Compliance with Law and Policies

The Supplier must, in the supply of the Goods, comply with:

- (a) all Laws; and
- (b) any reasonable, lawful requirements or policies of the University as advised by the University.

## 11 South Street Campus - Priority Management Zone for the destructive European House Borer (EHB)

The University's South Street campus is a Priority Management Zone for the destructive European House Borer (EHB). EHB can cause major structural damage to buildings. The following restrictions must be strictly adhered to by the Supplier:

- (a) no pine pallets are to be used or brought onto the South Street campus; and
- (b) the Supplier must not bring dried or dead pinewood that is of no commercial value onto the South Street campus.

## 12 Documents

(a) The agreement for the supply of Goods between the University and the Supplier consists of:

- (i) the Document(s) Incorporating These Conditions;
- (ii) the Specification; and
- (iii) these Conditions.

In the case of inconsistency between the documents listed above, those listed higher will prevail over those listed lower.

- (b) If a purchase order incorporates these Conditions by reference then, by supplying the Goods or invoicing for the supply of the Goods, the Supplier accepts these Conditions.
- (c) Any terms or conditions from the Supplier purporting to cover the supply of the Goods that are different or additional to those described in clause 12(a), whether forming part of an invoice or otherwise, will only apply if the University agrees in writing to be bound by them.

## 13 Modern Slavery

(a) In this clause: (i) "Act" refers to the *Modern Slavery Act 2018* (Cth); and (ii) "modern slavery" has the meaning set out in the Act.

(b) The Supplier warrants and agrees that: (i) it conducts its business in a manner that is consistent with the principles of the Act; (ii) neither the Supplier, nor any of its officers, employees or other persons associated with the Supplier, have been convicted of any offence involving modern slavery; (iii) having made reasonable enquiries, to the best of its knowledge, neither the Supplier nor any of its officers, employees or other persons associated with the Supplier have been or is the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with modern slavery; and (iv) it will, from time to time, provide information as reasonably requested by the University to validate compliance with this clause.

## 14 General

(a) The Agreement is governed by and is to be construed in accordance with the laws applicable in Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

(b) The Agreement is a non-exclusive agreement and the University may, at its discretion, engage other contractors to provide identical or similar goods.

(c) Neither party may use the name, logo or any trade mark of the other party in any promotional or advertising materials or any publicity, without first getting the consent of the other party.

(d) The operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities of the parties with respect to any matter to which Part 1F of that Act would apply but for this clause 14(d).

## 15 Interpretation

In these Conditions, unless the context otherwise requires:

**Agreement** means the agreement referred to in clause 12(a).

**Conditions** means these General Conditions for the Supply of Goods.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in anyway related to the University but excludes information that:

- (a) is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (b) the Supplier can demonstrate was in its possession prior to the date of the Agreement on a non-confidential basis;
- (c) the Supplier can demonstrate was independently developed by the Supplier;
- (d) is lawfully obtained by the Supplier from another person entitled to disclose such information on a non-confidential basis;

- (e) is disclosed with the University's written permission;  
or
- (f) is legally required to be disclosed, but only to the extent of that legal requirement.

**Delivery Point** means the location or address to which the Goods are to be delivered, as specified in the Agreement or as otherwise reasonably advised by the University.

**Document(s) Incorporating These Conditions** means:

- (a) any purchase order from the University for the supply of the Goods that incorporates these Conditions by reference; or
- (b) any other documentation in respect of the supply of the Goods that incorporates these Conditions by reference and has been agreed in writing by the Supplier and the University.

**Goods** means the goods (or any of them) specified in the Agreement.

**Intellectual Property** includes all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Laws** means the law in force in Western Australia and the Commonwealth of Australia, including common law and legislation.

**Purchase Price** means the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered.

**Specification** means the specifications to which the Goods must comply, as set out or referred to in the Document(s) Incorporating These Conditions, or as otherwise provided to the University by the Supplier or its employee, agent or contractor in connection with the supply of the Goods.

**Supplier** means the entity supplying the Goods under this Agreement.

**Tax Invoice** has the meaning specified in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Time for Delivery** means the date and, where relevant, the time specified in the Agreement (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

**Unit Price** means the price per item of each of the Goods, as specified in the Agreement.

**University** means Murdoch University, a body corporate established pursuant to section 4 of the *Murdoch University Act 1973* (WA).