



GENERAL CONDITIONS FOR THE SUPPLY OF SERVICES NOVEMBER 2020

1. Supply of Services

The Supplier must supply the Services to the University in accordance with these Conditions, and must:

- (a) meet any milestone dates for the provision of Services specified in the Agreement, and complete the provision of the Services by any completion date specified in the Agreement;
- (b) supply the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced supplier of services that are similar to the Services; and
- (c) supply any and all equipment necessary for the performance of the Services.

2. Price for the Services

- (a) The University will pay applicable Rates and Fees as consideration for the performance of the Services. The Rates or Fees are fixed. Expenses may only be charged in accordance with the Document(s) Incorporating These Conditions.
- (b) The Rates and Fees are inclusive of GST unless there is a specific statement to the contrary in the Document(s) Incorporating These Conditions.

3. Cancellation

The University may cancel the Services at any time by giving written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services. The University must pay all reasonable amounts due in accordance with clause 2 for all work performed by the Supplier up until cancellation but is not required to pay any further sums (including but not limited to any sums for loss of prospective profits).

4. Invoicing and payment

- (a) The Supplier must submit to the University a Tax Invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties. The Tax Invoice submitted for payment must contain such information as the University may reasonably require and be sent to the address specified in the Document(s) Incorporating These Conditions.
- (b) 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.
- (c) Payment of an invoice is not to be taken as evidence

that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

5. Failure to perform

- (a) Without limiting any other available remedy, if the Supplier fails to supply any of the Services in accordance with the Agreement, the University will not be required to pay for those Services until they are supplied correctly and may require the Supplier to remedy any default or re-perform the Services within the time specified in a notice (which must be reasonable having regard to the nature of the Services).
- (b) If the Supplier fails within the time specified to remedy the default or re-perform the Services pursuant to clause 5(a), the University may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable, additional costs incurred by the University in doing so.

6. Warranties

The Supplier warrants to the University that:

- (a) the Services will be suitable, appropriate and adequate for the purpose of the Services as: (i) stated in or reasonably inferred from the description of Services contained in the Agreement; or (ii) otherwise made known to the Supplier expressly or by implication;
- (b) it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created that conflict with or might appear to conflict with obligations under the Agreement; and
- (c) it is entitled to use and deal with any Pre-Existing Intellectual Property for the purpose of delivering the Services and as set out in clause 8(b).

7. 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 Services; or (b) any breach of the Agreement by the Supplier.

8. Intellectual Property

- (a) Subject to clause 8(b), all Intellectual Property in Contract Materials vests in and is the property of the University from the time of its creation and the Supplier irrevocably and unconditionally assigns to the University, free of additional charge, all of its right, title and interest in and to that Intellectual

Property. The Supplier must sign all documents and do all things reasonably required to ensure that such assignment is effected.

- (b) Clause 8(a) does not affect the ownership of any Pre-Existing Intellectual Property. Subject to anything to the contrary stated in the Document(s) Incorporating These Conditions, the Supplier hereby irrevocably and unconditionally grants to the University, free of additional charge, a non-exclusive, worldwide licence to use, reproduce, modify or exploit any Pre-Existing Intellectual Property incorporated in any Contract Materials as part of the University using, reproducing, modifying or exploiting those Contract Materials.

9. Insurance

- (a) Unless otherwise agreed in writing by the University, the Supplier must have: (i) public and products liability insurance with a sum insured of at least \$20m per claim; and (ii) professional indemnity insurance with a sum insured of at least \$1m 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 9(a).

10. Confidentiality and privacy

- (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 Services.
- (b) Subject to clause 17(e), the Supplier hereby consents to the University publishing or otherwise making available information in relation to the Supplier (and the supply of the Services) as it determines.
- (c) The Supplier agrees to protect personal information as required by: (i) any law; and (ii) the University's privacy policy (except to the extent that the policy is inconsistent with any law). The term "personal information" has the meaning specified in the *Privacy Act 1988 (C'th)*.

11. 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.

12. Subcontracting

- (a) The Supplier must not subcontract any of its obligations in relation to the Services without the prior written consent of the University (which may be given or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any

subcontracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself.

13. Compliance with Law and Policies

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

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

14. 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, and the Supplier must ensure that the following conditions are strictly adhered to by any subcontractor engaged by the Supplier:

- (a) no pine pallets are to be used or brought into, onto or within the South Street campus; and
- (b) no dried or dead pinewood (other than that which is of commercial value and which the Supplier warrants is EHB-free) may be brought into, onto or within the South Street campus.

15. Documents

- (a) The agreement for the supply of Services between the University and the Supplier consists of:
 - (i) the Document(s) Incorporating These Conditions; and
 - (ii) these Conditions.

In the case of inconsistency, the Document(s) Incorporating These Conditions will prevail.

- (b) If a purchase order incorporates these Conditions by reference then, by supplying the Services or invoicing for the supply of the Services, the Supplier accepts these Conditions.
- (c) Any terms or conditions from the Supplier purporting to cover the supply of the Services that are different or additional to those described in clause 15(a), whether forming part of an invoice or otherwise, will only apply if the University agrees in writing to be bound by them.

16. Modern Slavery

- (a) In this clause: (i) "Act" refers to the *Modern Slavery Act 2018 (C'th)*; 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.

17. 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) Time is of the essence in relation to the supply of the Services.
- (c) The Agreement is a non-exclusive agreement and the University may, at its discretion, engage other contractors to provide identical or similar services.
- (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 17(d).
- (e) 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.

18. Interpretation

In these Conditions, unless the context otherwise requires:

Agreement means the agreement referred to in clause 15(a).

Conditions means these General Conditions for the Supply of Services.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to the University and/or the Services which arises from the Services or is disclosed, made available, communicated or delivered to the Supplier, 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.

Contract Materials means any materials (including but not limited to any Deliverables) created as part of or arising in the course of the supply of the Services

Deliverable means any work or other item provided by the Supplier to the University as part of the supply of the Services.

Document(s) Incorporating These Conditions means:

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

Fees means a fixed fee payable to the Supplier for the supply of the Services as set out in the Document(s) Incorporating These Conditions.

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.

Pre-Existing Intellectual Property means any pre-existing or independently created Intellectual Property that is the property of the Supplier or a third party and that is provided or required to be provided by the Supplier as part of the supply of the Services.

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the supply of the Services as set out in the Document(s) Incorporating These Conditions.

Services means the services (or any of them) specified in the Agreement.

Supplier means the entity supplying the Services under this Agreement.

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

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