

# GRIFFITH UNIVERSITY STANDARD TERMS & CONDITIONS OF PURCHASE

## 1. Definition and Interpretation

The definitions and rules of interpretation that apply to these Terms are set out in Schedule A.

## 2. The Contract

- a) A Contract will be formed between the Customer and Supplier on these Terms when the Supplier accepts a Purchase Order, or provides the Goods or Services set out in the Purchase Order. The Contract continues until the Goods are delivered or the Services are performed, or the expiry date specified in the Purchase Order (if applicable), unless terminated earlier in accordance with this Contract. These Terms can only be changed, or other terms agreed, by written agreement signed by an authorised signatory of the Customer.
- b) The Contract consists of the following documents:
  - i) These Terms and Conditions ('the Terms');
  - ii) The Purchase Order;
  - iii) Any express written document agreed between the Parties which is attached to, or incorporated by reference in the Purchase Order.

To the extent of any inconsistency, the order of hierarchy from highest to lowest [(i) to (iii)] in clause 2.1(a) shall prevail, unless otherwise specified by the parties in the Purchase Order.

- c) The Customer has the right to cancel the Purchase Order and terminate this Contract at any time prior to delivery of the Goods or completion of the Services, by written notice to the Supplier. The Supplier will promptly notify the Customer if it will incur expenses as a consequence of the cancellation, including the estimated amount. If the Customer proceeds to cancel the Purchase Order, the Customer will reimburse the Supplier for its out of pocket expenses reasonably incurred as a direct consequence of the cancellation. The Supplier must take all reasonable steps to minimise the expenses associated with cancellation.

## 3. Supplier Obligations

- a) The Supplier must ensure that the Goods satisfy the description in the Contract, are of a high quality and fit for their usual purpose and any other purpose disclosed by the Customer before the Contract is formed. The Supplier must provide the Goods and/or Services in accordance with this Contract and the Customer's delivery instructions, including within the timeframes specified in the Purchase Order or as otherwise agreed.
- b) The Supplier must ensure the highest quality of work, and provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services. Unless otherwise stated, the Contract includes the complete performance of those services requested including any employee instruction, manuals, explanations or certifications necessary to enable the Customer to benefit from them for their intended purposes.
- c) If the Supplier enters the Site to deliver the Goods or provide the Services, the Supplier must comply with Customer policies, codes of conduct, rules, standards and procedures, and workplace health and safety policies relevant to the Site. The Customer will make copies available on request.
- d) The Supplier must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract.
- e) The Supplier must comply with all Laws necessary for the Supplier to perform the Contract (and provide evidence of compliance if the Customer asks), and ensure that use of the Goods by the Customer as contemplated in the Contract will comply with all Laws.
- f) The Supplier will observe the principles of ecologically sustainable development where its activities and operations affect the environment. The Supplier will ensure that it does not pollute, contaminate or damage the environment and keep the Customer's premises clean and tidy and free of refuse during the performance of the Services.
- g) The Supplier must not use or disclose or otherwise make available any Confidential Information to any person except to its Personnel on a need to know basis to perform the Contract.
- h) If the Supplier collects or has access to any Personal Information in order to perform the Contract, the Supplier must, when performing this Contract:
  - i) if the Customer is an 'agency' for the *Information Privacy Act 2009 (Qld)* (the 'Act'), other than for Chapter 3 of the Act – comply with those parts of Chapter 2 of the Act which are applicable to the Customer, as if the Supplier were the Customer; or
  - ii) otherwise – comply with the Australian Privacy Principles in the *Privacy Act 1988 (Cth)*.
- i) The Supplier is fully responsible for its Personnel, including for ensuring Personnel comply with the Requirements. The Supplier is not, and Supplier Personnel are not, employees of the Customers.

## 4. Conflict of Interest and criminal organisations

- a) The Supplier warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed in writing to the Customer.
- b) The Supplier warrants that neither it nor its Personnel:
  - i) have been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the *Criminal Code*; or
  - ii) are subject to an order under, or have been convicted of an offence under the *Criminal Organisation Act 2009 (Qld)*.
- c) The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out-of-date or misleading in any way when made, or becomes inaccurate, incomplete, out-of-date or misleading in any way. In addition to any other remedies available to it under Law or contract, the Customer may, in its absolute discretion,

# GRIFFITH UNIVERSITY STANDARD TERMS & CONDITIONS OF PURCHASE

immediately terminate the Contract if it believes the Supplier has breached any warranties in this clause.

## 5. Invoicing, Price and Payment

- a) The Supplier may invoice the Customer after delivery of Goods or Services that comply with the Requirements.
- b) The Supplier must include adequate information for the Customer to verify the invoice, (including the Purchase Order number to which the Invoice relates and a brief description of the supplied Deliverables provided in the period covered by the invoice) and provide any further documentation reasonably requested by the Customer. The Customer is not required to pay any invoice that does not comply with this clause.
- c) The Customer will pay each correctly rendered tax invoice within 30 days of receipt.
- d) The Customer may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.
- e) The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

## 6. GST

- a) Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.
- b) Where GST is imposed on a supply under the Contract, the recipient of the supply shall pay to the supplier an amount equal to the GST (if any) payable on the taxable supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment. Terms in this clause have the same meanings as in the GST Law.

## 7. Confidentiality

- a) The Supplier must ensure that its officers, employees, agents and sub-contractors do not use or disclose Confidential Information to any person for any purpose other than to provide the Goods and/or Services, in accordance with these terms.
- b) If the Supplier collects or has access to Confidential Information in order to provide the Goods and/or Services, the Supplier must comply with the Information Privacy Act 2009 (Qld) in relation to the discharge of its obligations under the Contract, as if the Supplier was the Customer.
- c) Where the Supplier discloses the Confidential Information to a third party as permitted under the Contract, the Supplier must inform the third party of the confidential nature of the information, and will be responsible for all use and disclosure of the information by the Recipient's Personnel and professional advisors.
- d) If the Customer requests, the Supplier must obtain from its Personnel a signed confidentiality deed in a form acceptable to the Customer.
- e) The Supplier must not make any public announcements or advertisement relating to the Contract except where the Customer has approved the proposed announcement or advertisement in writing.
- f) If requested by the Customer, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential Information and Personal Information of the Customer, and a copy of all documents and records created by the Supplier in the performance of the Contract, and will confirm to the Customer when this has been done.
- g) The Supplier must return all records to the Customer upon completion or termination of the Contract.
- h) The Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

## 8. Insurance

- a) The Supplier must at its cost, effect and maintain during the term of the supply of Goods or the provision of Services, the following insurance:
  - i) Workers' Compensation Insurance (as required by Law);
  - ii) Public Liability insurance for an amount, in respect of any single occurrence, of not less than \$10 million;
  - iii) If providing Services, Professional Indemnity Insurance for an amount, in respect of any single occurrence, of not less than:
    - a. \$10 million where the total Price of the Contract exceeds \$5000; or
    - b. \$5 million where the total Price of the Contract is \$5000 or less; and/or
  - iv) If providing Goods, Product Liability Insurance for an amount, in respect of any single occurrence, of not less than \$10 million,

unless otherwise specified in the Purchase Order.

- b) The Supplier must provide a certificate of currency for each policy upon request by the Customer; and
- c) The Supplier must promptly notify the Customer if any policy is cancelled or there is any significant change in any of those policies.

## 9. Liability

- a) Subject to clause 9 b) the maximum liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is an amount equal to the total of all Prices (including additional expenses and charges) payable under the Contract, multiplied by 1.5.
- b) The cap on liability in clause 9 a) does not apply to liability in relation to:
  - i) personal injury, including sickness, injury or death; or
  - ii) loss of, or damage to, tangible property; or
  - iii) Wilful Default, Wilful Misconduct, unlawful act or omission of, or failure to comply with applicable Law by the Supplier or its Personnel; or
  - iv) any Claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights.

# GRIFFITH UNIVERSITY STANDARD TERMS & CONDITIONS OF PURCHASE

## 10. Intellectual Property Rights

The Supplier grants (and must procure that relevant third parties grant) the Customer an irrevocable, unconditional, perpetual, free of additional charge, royalty free, non-exclusive, worldwide and transferable (including sub-licensable) licence to exercise all Intellectual Property Rights in the Goods and Services, for any purpose of the Customer

The Supplier warrants that it is authorised to grant the rights in this clause.

## 11. Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, shall vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause. The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel on a need to know basis to perform the Contract. The Supplier must comply with clause 5(i) and all applicable Laws in relation to Customer Data which is Personal Information, and must provide reasonable assistance to the Customer on request to enable the Customer to comply with Laws, policies and standards applicable to the Customer in relation to Customer Data including (without limitation) identifying, labelling, searching, reporting, copying, retrieving and modifying Customer Data in relation to Personal Information, public records, right to information and information standards.

## 12. Where Requirements not met

If any Requirements for the Goods and/or Services are not met, at the request of the Customer the Supplier will promptly:

- a) resupply the relevant Goods;
- b) re-perform the relevant Services; or
- c) refund the Customer any monies paid,

and the Customer may exercise any other right or remedy that it has under this Contract or otherwise.

If the Supplier fails to comply with its obligations under this clause, the Customer may have the Goods and/or Services re-supplied or re-performed by others, and the Supplier shall pay to the Customer on demand any costs incurred by the Customer in doing so.

Acceptance of the Goods and/or Services by the Customer does not relieve the Supplier of any of its obligations under the Contract.

## 13. General

The parties agree that:

- a) **(communication)** they will direct all enquiries relating to the Contract to the other party's nominated contact person, or to another person if the other party directs;
- b) **(variation)** the Contract may only be varied by written agreement of authorised representatives of the parties;
- c) **(entire agreement)** this Contract sets out all the parties rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply;
- d) **(relationship)** their relationship is of principal and contractor. This Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Customer;
- e) **(manufacturer warranties)** the Supplier assigns any manufacturer's warranty to the Customer, where possible to do so, and must inform the Customer where it is not possible to do so;
- f) **(delivery)** the Supplier must deliver the Goods or other relevant Deliverables to the Site in accordance with the Customer's instructions. If the Supplier asks, the Customer will confirm in writing that the Deliverables have been received;
- g) **(packaging)** the Supplier must adequately pack and protect Goods to withstand transit and storage, and provide a packing note with the Goods;
- h) **(rejected Goods)** if the Customer rejects Goods, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost;
- i) **(not exclusive)** acceptance of this Contract does not provide evidence of, nor does it create an exclusive relationship between the Customer and the Supplier in respect of the provision of Deliverables.
- j) **(risk)** risk will transfer to the Customer when the Goods are delivered to the delivery address specified in writing by the Customer, in accordance with the delivery instructions.
- k) **(title)** title in the Goods and Deliverables will transfer on the earlier of the delivery or payment of the applicable Price;
- l) **(no encumbrance)** the Supplier warrants that the Goods are not (and when title passes, will not be) subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract; and
- m) **(right to publish)** the Customer may publish information about the Contract on its internal databases, where required or recommended by Government procurement policy, or as required under the Right to Information Act 2009 (Qld) or other Law.

### A. SCHEDULE A Definitions

**Business Day** means between 9.00am and 5.00pm on a day other than Saturday, Sunday or public holiday at the Customer's address.

# GRIFFITH UNIVERSITY STANDARD TERMS & CONDITIONS OF PURCHASE

**Claim** includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those arising out of the terms of any settlement.

**Confidential Information** means all information disclosed by or on behalf of the Customer or the Supplier ("Discloser") to the other party ("Recipient") in connection with any form of quotation or tender process or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case of the Customer) all Customer Data. Confidential Information does not include any information which:

- a) is or becomes public, except through breach of a confidentiality obligation;
- b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient;
- c) or the Recipient receives from another person on a non-confidential basis.

**Conflict of Interest** includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

**Contract** means an agreement between the Customer and the Supplier for the purchase of Goods or Services under a Purchase Order, these Terms and any associated document specified in the Purchase Order as forming part of the Contract.

**Customer** means Griffith University or the entity as listed on the Purchase Order.

**Customer Data** means any information, materials, data, datasets or databases to the extent provided by or on behalf of the Customer or to the extent created, processed, produced or derived by or on behalf of the Supplier using that information, materials, data, datasets or databases.

**Deliverables** means the Goods, Services and documentation to be provided to the Customer as described in the Requirements, and all incidental and ancillary goods, services and documentation.

**Goods** means the goods the Supplier will provide as described in the Purchase Order or any express written agreement from the Customer which is attached to, or incorporated by reference in the Purchase Order or these Terms.

**GST** has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

**GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

A person or entity is **Insolvent** if:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or
- b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or it is otherwise unable to pay its debts when they fall due; or

something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

**Intellectual Property Rights** includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Purchase Order but excludes Moral Rights.

**Laws** means all:

- a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
- b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable; and
- d) fees and charges payable in connection with the foregoing.

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and the rights of a similar nature anywhere in the world, whether existing before or after the date of the Purchase Order.

# GRIFFITH UNIVERSITY STANDARD TERMS & CONDITIONS OF PURCHASE

**Personal Information** has the meaning given:

- a) for the purpose of the Information Privacy Act 2009 (Qld)– in that Act; or
- b) for the purposes of the Privacy Act 1988 (Cth) – in that Act.

**Personnel** means officers, directors, employees, agents and subcontractors.

**Price** means the price or prices described in the Purchase Order.

**Purchase Order** means any form of order from the Customer for the provision of Goods and/or Services which incorporates any Contract document and incorporates these Terms.

**Requirements** means the products, standards, specifications and other requirements for the Deliverables and the performance of the Supplier's other obligations under the Contract as set out on the Purchase Order.

**Services** means the services the Supplier will perform as described the Purchase Order (as applicable), or any express written agreement from the Customer which is attached to or incorporated by reference in, the Purchase Order or these Terms.

**Site** means the site or premises at which the Deliverables are to be provided as specified by the Customer in the Purchase Order.

**Supplier** is described in the Purchase Order or the Contract as the entity providing the Goods and/or Services to the Customer.

**Wilful Default** means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract by a party or its Personnel.

**Wilful Misconduct** means an intentional breach of either a material provision of the Contract or of a Law in respect of the Supplier's obligations under the Contract, committed with reckless disregard for the consequences and in circumstances where the Supplier knows or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

## **B. Interpretation**

Unless it is expressly stated that a different rule of interpretation will apply:

**(agreement)** a reference to an agreement includes any variation or replacement of the agreement;

**(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;

**(consistency)** where the Contract is made up of more than one document, the Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;

**(contract departures)** the contract departures section of the Details will take precedence over all other documents.

**(currency)** all currency amounts are in Australian dollars;

**(headings)** headings are provided for convenience and do not affect the interpretation of the Contract;

**(includes)** "include", "includes" and "including" must be read as if followed by the words without limitation";

**(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;

**(governing law)** the laws of Queensland apply to a Contract. Each party submits to the exclusive jurisdiction of the courts of Queensland;

**(law)** a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;**(person)** a person includes the person's executors, administrators, novatees and assignees;

**(construction)** no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;

**(severability)** if any part of a Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

## **C. Notices**

a) A notice will be deemed to be given:

- i) If posted – two (2) Business Days after the date of posting;
- ii) If delivered by hand during a Business Day – on the date of delivery;
- iii) If emailed – subject to clause (b) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered, except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

b) A notice of suspension or termination of a Contract which is sent via email must also be sent by post or hand delivery, and will not be deemed to be given until the notice is deemed to be delivered by post or hand delivery.