

UNIVERSITY OF OTAGO

PURCHASE ORDER GENERAL TERMS

Last updated: 15 January 2020

1. SCOPE

- 1.1 This agreement (**Agreement**) comprises these general terms and the relevant purchase order (**PO**) issued by the University of Otago (**University**) to the party named in the PO (**Supplier**). The PO includes any documents attached to, or referenced in, the PO, but excludes any terms or conditions provided by the Supplier.
- 1.2 This Agreement applies to any supply of goods or services specified in a PO (**Goods and Services**), unless the University signs a separate written agreement for those goods and services. If there is any inconsistency between these general terms and the PO, the PO will prevail.
- 1.3 This Agreement commences on the date of issue of the PO and (unless terminated earlier) will end on the date on which all obligations under this Agreement have been performed. After expiry or termination of this Agreement, the University may still enforce any rights against the Supplier in respect of obligations that arose during the term of the Agreement.

2. GOODS AND SERVICES

- 2.1 The Supplier must provide the Goods and Services using suitably skilled personnel, exercising reasonable care, skill and diligence, and in accordance with:
 - 2.1.1 any specifications referred to in the PO;
 - 2.1.2 good industry practice;
 - 2.1.3 any delivery dates specified in the PO;
 - 2.1.4 all applicable laws and codes of practice;
 - 2.1.5 all applicable University policies, procedures and standards; and
 - 2.1.6 all reasonable directions and requirements of the University.
- 2.2 The Supplier will ensure that all Goods:
 - 2.2.1 are new and of merchantable quality;
 - 2.2.2 are free from all defects and fit for any purpose specified in the PO; and
 - 2.2.3 are supplied unencumbered and with clean title.
- 2.3 The Supplier guarantees that the Goods and Services will be free from defects for 12 months from the date of first use by the University. If, at any time during this period, any Goods or Services are defective, the Supplier must (at its cost) remedy, resupply or refund the defective Goods or Services, at the University's discretion.
- 2.4 The University may inspect, test and reject any Goods and Services at any time. The Supplier must remove any rejected Goods, and must either resupply, or refund all amounts paid in respect of, any rejected Goods and Services, at the University's discretion. The University is not required to accept partial deliveries unless specified in the PO.
- 2.5 The Supplier must display the PO number on all packages, invoices and correspondence.

3. TITLE AND RISK

- 3.1 Title to Goods and Services passes to the University at the earlier of payment by the University or when risk passes in accordance with clause 3.2 below.
- 3.2 Risk in Goods and Services will pass to the University once the Goods and Services are delivered to, and accepted by, the University.

4. FEES AND PAYMENT

- 4.1 The University will pay the Supplier the fees set out in the PO (**Fees**) in accordance with the payment terms set out in the PO. If no payment terms are set out in the PO, the University will pay monthly in

arrears, with payment due on or before the 20th of month following issue of invoice (except for any part of the Fees disputed by the University). Payment of any invoice is on account only and does not constitute acceptance of any aspect of the Goods and Services.

4.2 The Supplier must provide valid tax invoices to the University in accordance with the University's requirements. All figures in this Agreement are expressed in NZD and are exclusive of GST, unless specified otherwise.

4.3 The University may set off any amounts owing by the Supplier against any amounts payable to the Supplier.

5. VARIATIONS

5.1 Either party may, at any time by notice in writing to the other, request any change to the Goods or Services (**Variation**).

5.2 Where the Supplier considers that a direction from the University is a Variation (because it materially affects the scope or timing of the Goods and Services), the Supplier must notify the University as soon as practicable.

5.3 The Supplier must not vary the Goods or Services, or commence any work under a Variation, unless the University has first approved the Variation in writing (including the relevant fees and expenses (or the basis for their calculation) and the timing for delivery) by issuing a PO amendment notification.

6. HEALTH AND SAFETY

6.1 The parties will comply, and will co-operate, consult and co-ordinate with each other to enable each of them to comply, with their respective obligations under all applicable health and safety laws.

6.2 The Supplier must provide to the University any information requested from time to time to enable the University to comply with its health and safety obligations.

7. INTELLECTUAL PROPERTY AND INDEMNITY

7.1 Nothing in this Agreement affects any intellectual property owned by a party before this Agreement or created by a party independently from this Agreement (**Pre-existing IP**).

7.2 Each party grants to the other an unrestricted, royalty-free licence to use that party's Pre-existing IP to the extent reasonably required for the Supplier to provide the Goods and Services, or for the University to receive the benefit of the Goods and Services.

7.3 Any deliverables and new intellectual property (**New IP**) created by the Supplier in performing its obligations under this Agreement will become the property of the University upon creation.

7.4 The Supplier warrants and undertakes that any Pre-existing IP and New IP provided by the Supplier under this Agreement will not infringe any intellectual property rights of any person.

7.5 The Supplier indemnifies the University against any losses or liabilities suffered or incurred by the University in respect of any action, suit, claim, demand, cost or expense arising in connection with any third party claim that the supply of the Goods or Services, or the University's use of them, infringes any third party's rights. This indemnity is not subject to the limits on liability in clause 10.1.

8. CONFIDENTIALITY

8.1 The Supplier must keep confidential all information provided by the University that is either identified as, or would reasonably be expected to be, proprietary, confidential or commercially sensitive.

9. INSURANCE

9.1 During this Agreement, the Supplier must maintain at least \$5,000,000 public liability insurance, on terms reasonably acceptable to the University.

9.2 Despite anything else in this Agreement, the Supplier must maintain insurance cover that is at least adequate to cover the Supplier's potential liability under this Agreement.

10. LIABILITY

10.1 To the extent permitted by law, and subject to clause 7.5:

10.1.1 the total aggregate liability (in contract, tort or otherwise) of:

- (a) the University will be limited to the Fees; and
- (b) the Supplier will be limited to \$5,000,000 (except in respect of any fraud, negligence, wilful default or illegal act or omission of the Supplier); and

10.1.2 neither party will be liable for any indirect or consequential loss.

11. SUSPENSION

11.1 The University may direct the Supplier to suspend supply of all or any part of the Goods and Services at any time. If the Supplier receives such a direction, it must immediately comply. Unless the suspension is due to a default on the part of the Supplier, the suspension will be treated as a Variation.

12. TERMINATION

12.1 The University may terminate this Agreement at any time by giving no less than 10 working days' notice to the Supplier.

12.2 The University may immediately terminate this Agreement by notice in writing if the Supplier:

12.2.1 commits a material breach of this Agreement that is not remedied after 5 working days' notice; or

12.2.2 does something, or fails to do something, that, in the University's opinion, brings the University's reputation into disrepute.

12.3 The termination or expiry of this Agreement will not affect any liabilities of either party accrued prior to that termination or expiry. Any terms of this Agreement that are intended to survive termination will survive termination or expiry.

13. DISPUTE RESOLUTION

13.1 The parties must use their best endeavours in good faith to resolve any dispute or difference that arises under this Agreement.

14. GENERAL

Amendment

14.1 No amendment to this Agreement will take effect unless it is approved in writing by both parties (and where the amendment relates to a Variation, a PO amendment notification has been issued by the University).

Assignments and transfers

14.2 The Supplier must not assign, subcontract or transfer any of its rights or obligations under this Agreement (including by change of control) without the prior written approval of the University.

Entire agreement

14.3 This Agreement contains the entire agreement of the parties and supersedes all previous discussions and agreements of the parties on this subject matter.

Other terms not to apply

14.4 To the extent that the Supplier's terms and conditions are supplied to the University, those terms and conditions will be of no legal effect and will not constitute part of the Agreement.

Governing law and jurisdiction

14.5 This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Independent contractor status

14.6 The Contractor remains in all respects an independent contractor and not an employee, agent or partner of the University.