

GENERAL CONDITIONS FOR THE SUPPLY OF SERVICES

1. Provision of Services

The Supplier must provide the Services to the University in accordance with these conditions, and must:

- (a) complete the Services by the Completion Date and any other dates for delivery specified in the Purchase Order;
- (b) provide 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 provider of services that are similar to the Services;
- (c) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (d) act in good faith and in the best interests of the University; and
- (e) provide any and all equipment necessary for the performance of the Services.

2. Price for the Services

Murdoch will pay applicable Rates and Fees (as set out in the Purchase Order) as consideration for the performance of the Services. The Rates or Fees are fixed. Expenses may only be charged in accordance with the Purchase Order.

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 not any 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. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the University may reasonably require and be sent to the address specified in the Purchase Order.
- (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 it must pay the undisputed amount (if any) and notify the Supplier of the amount the University believes is due for payment. 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 provide any of the Services in accordance with the Agreement, the University will not be required to pay for those Services (until they are provided 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 default referred to in **clause 5(a)** is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, 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 costs incurred by the University in doing so.

6. Warranties

The Supplier warrants to the University that:

- (a) (**Purpose**) where the University has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (b) (**Conflict**) 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 in conflict with or might appear to be created in conflict with its obligations under the Agreement; and
- (c) (**IP**) it is entitled to use and deal with any Pre-Existing Intellectual Property Rights which may be used by it in connection with the Services.

7. Liability

The Supplier must indemnify the University and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to provide the Services in accordance with these Conditions or any other breach of the Agreement.

8. Intellectual Property Rights

- (a) Subject to **clause 8(c)**, all Contract Intellectual Property 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 the Contract Intellectual Property. The Supplier must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (b) The Supplier warrants that it has or will procure from all relevant persons who are authors or makers of any Contract Intellectual Property a written assignment of all Intellectual Property Rights of such persons in the Contract Intellectual Property as

necessary to give effect to **clause 8(a)** and a written consent from all individuals involved irrevocably consenting to the University exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

- (c) This Agreement does not affect the ownership of any Pre-Existing Intellectual Property. The Supplier hereby irrevocably and unconditionally grants to the University, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that it forms part of or is integral to any works or other items created by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property.

9. Insurance

- (a) The Supplier must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of the Services including professional indemnity and, if applicable, public and products liability insurance.
- (b) On request, the Supplier must provide the University with evidence of the currency of any insurance it is required to obtain.
- (c) The Contractor must ensure that, except for any contract of professional indemnity insurance that may be required under item 9(a), or where prohibited by any applicable law, each contract of insurance referred to in item 9(b), must be endorsed:
- (i) with the University's interests and liabilities arising out of or in connection with this Agreement being noted; and
 - (ii) with a cross-liabilities clause in which the insurer agrees that the policy applies as if a separate policy was issued to each named insured (with the exception of limits of liability).

10. Confidentiality and privacy

- (a) The Supplier and its employees, agents, directors, partners, shareholders 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 providing the Services.
- (b) The Supplier hereby consents to the University publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as it determines.
- (c) The Supplier agrees to protect personal information as required by: (i) any law; (ii) Murdoch'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 sub-contractors use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of the University.

12. Sub-contracting

- (a) The Supplier must not sub-contract to any third person 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 sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

13. Compliance with Law

The Supplier must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of the University applicable to the provision of the Services.

14. GST

Terms used in this clause have the same meanings given to them in the GST Act.

15. General

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.

Time is of the essence in relation to the provision of the Services.

16. Interpretation

In these Conditions, unless the context otherwise requires:

Agreement means the agreement for the provision of the Services of which these Conditions and the Purchase Order form part.

Conditions means these General Conditions for the Provision of Services.

Completion Date means the date set out in the Purchase Order by which provision of the Services must be effected by the Supplier.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in anyway related to, the University and/or the Services, including any information designated by the University as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (b) which the Supplier can demonstrate was in its possession prior to the date of the Agreement without any associated obligation of confidence;
- (c) which the Supplier can demonstrate was independently developed by the Supplier; or
- (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

Contract Intellectual Property means any Intellectual Property created as part of or arising in the course of the provision of the Services.

Fees means a fixed fee payable to the Supplier for the provision of the Services.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights 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 the Western Australia and the Commonwealth of Australia, including common law and legislation.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights (excluding Contract Intellectual Property) which are the property of the Supplier or a third party and which are provided or required to be provided by the Supplier as part of the provision of the Services.

Purchase Order means any form of order or acknowledgment from the University for the provision of the Services which incorporates these Conditions.

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services.

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

Supplier means the person supplying the Services under these Conditions.

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