

University of Canterbury Purchase Order Terms and Conditions

1. DEFINITIONS

In these Terms:

Business Day means any day other than a Saturday or Sunday, or a public holiday observed in Christchurch, New Zealand, and the days between Christmas Eve and New Years' Day (inclusive), between the hours of 0800 and 1700 (New Zealand time).

Campus means any property, premises or land owned or controlled by us from time to time and includes property that we lease and/or licence from third parties, exclusively or non-exclusively.

Confidential Information means any information, in whatever form, about us that is either by its nature confidential, is designated by us as confidential, or which you ought reasonably know is confidential and includes information relating to our business affairs, including any research materials, trade secrets, know how or supplier details, and includes the terms of each Purchase Order, but excludes information that is required to be disclosed by law.

Contract means the agreement between you and us for the purchase of Goods and/or the provision of Services, including these Terms and the Purchase Order.

Delivery means in the case of Goods, delivery of the Goods in accordance with clause 6 of these Terms, to a location nominated by us in the Purchase Order. In the case of Services, Delivery means the completion of the Services in accordance with clause 6 of these Terms. **Deliver** has a corresponding meaning to this definition.

Goods means the goods described in the Purchase Order, including all components and parts associated with the goods.

GST means goods and services tax payable under the Goods and Services Tax Act 1985 (GST Act), or any other enactment that replaces or supersedes the GST Act.

Hazardous Substance has the meaning given to it in the Hazardous Substances and New Organisms Act 1996, or any other enactment that replaces or supersedes that Act.

Hot Work means brazing, cutting, grinding, soldering, welding, burning, using a torch during roofing, or similar operations capable of initiating fire or explosion, the use of any electric, oxy-acetylene, laser or similar welding or cutting or spark producing equipment, blow lamps (including electric hot air blowers or other heat or flame producing apparatus while performing welding and cutting or any allied process).

Hot Work Policy means our policy by that name (which may be updated from time to time by notice to you), as well as any additional Hot Work requirements notified to you.

HSWA means the Health and Safety at Work Act 2015, together with its regulations, or any other enactment or regulation that replaces or supersedes the HSWA, or its regulations.

Intellectual Property means all industrial and intellectual property rights, whether conferred by statute, at common law or in equity, including, but not limited to: inventions, copyright, trade marks, domain names, trade secrets, designs, and patents, whether registered or unregistered.

NZD means New Zealand Dollars.

PPSA means the Personal Property Securities Act 1999, or any other enactment that replaces or supersedes the PPSA.

Price means the price for the Goods and Services, as set out in the Purchase Order.

Purchase Order means a written (including electronic) order for Goods and/or Services from you, which may be placed by us from time to time. It includes a subsequent email exchange agreeing and/or clarifying the details of the written order.

Services means the services described in the Purchase Order, including all deliverables associated with the services.

Tax Invoice has the meaning given to that term in the GST Act.

Terms means these Terms and Conditions.

we, our and us means the University of Canterbury, Christchurch, New Zealand having its physical address at 20 Kirkwood Avenue, Upper Riccarton, Christchurch 8041, unless the context indicates otherwise.

you and your means you as the supplier of the Goods or Services, as named in the Purchase Order, unless the context indicates otherwise.

2. APPLICATION AND CONTRACT FORMATION

- 2.1 **Application:** These Terms apply to all purchases by us of Goods and/or Services under any Purchase Order. In the event of another contract being executed between you and us, that contract will replace these Terms.
- 2.2 **Terms Prevail:** In the event of any conflict or inconsistency between your terms of trade (including any terms of trade appearing on your invoices, communications to us, or sales confirmation) and these Terms, these Terms will prevail.
- 2.3 **Offer:** A Purchase Order is an offer by us to purchase Goods and/or Services from you.
- 2.4 **Acceptance:** You accept our Purchase Order by communicating your acceptance to us verbally or in writing, or by supplying the Goods and/or Services (wholly or partially) to us pursuant to the Purchase Order.
- 2.5 **Contract:** In communicating your acceptance under clause 2.4 of these Terms, the Contract is formed.
- 2.6 **Withdrawal:** We may withdraw our offer under any Purchase Order at any time, unless it has been accepted by you under these Terms.
3. **SPECIFICATIONS, NO MINIMUM ORDER AND NO EXCLUSIVITY**
 - 3.1 **Specifications:** You agree to supply the Goods and/or provide the Services in accordance with the details, specifications and quantities specified in the Purchase Order.
 - 3.2 **No Minimum Order:** Individual Purchase Orders for the Goods and/or Services will be issued by us, as and when required. Nothing in a Purchase Order or these Terms creates any minimum purchasing obligations on us.
 - 3.3 **No Exclusivity:** Our relationship with you is non-exclusive. You are free to supply goods and/or

provide services to other purchasers, and we are free to procure goods and/or services from other suppliers, unless we agree otherwise.

4. PAYMENT TERMS

- 4.1 **Date:** On Delivery of the Goods and/or completion of the Services, you will provide us with your Tax Invoice for the Price of the relevant Goods and/or Services.
- 4.2 **Details:** To be valid, your Tax Invoice must: state our Purchase Order number; comply with the GST Act; describe the Goods and/or Services provided, which matches our Purchase Order; and separately detail the GST.
- 4.3 **Payment:** We will pay your Tax Invoice by electronic bank transfer on the 20th day of the month following the date of receipt of the Tax Invoice, unless we dispute it, or the details are not correct, or it is invalid. For example, a Tax Invoice received on 19 January will be paid on 20 February and a Tax Invoice received on 1 March will be paid on 20 April.
- 4.4 **No Interest:** If we dispute any Tax Invoice (wholly or partially), we will promptly notify you, and pay the undisputed part pending resolution of the dispute. No interest will be payable to you on any amount withheld under these Terms, or on any other amount not paid when due.
- 4.5 **GST and Currency:** Except as expressly stated otherwise in a Purchase Order, the Price is exclusive of GST (if any) and in NZD.
- 4.6 **Freight Charges:** All Goods are to be provided without transport charges, unless agreed otherwise by us in writing.
- 4.7 **Notification:** You agree to email all Tax Invoices to paperlessap@canterbury.ac.nz or such other addresses that may be notified to you from time to time.

5. TITLE, RISK AND LICENSING

- 5.1 **Risk:** Unless otherwise agreed, the risk in Goods provided to us passes on Delivery and acceptance. You must insure all Goods until they have been delivered to and accepted by us, and risk has passed.
- 5.2 **Title:** Title in Goods ordered by us passes to us on the earlier of delivery or payment for the Goods.
- 5.3 **Licence:** Where any Goods include software, the software will be licensed to us together with the Goods, perpetually and on a royalty-free basis, except as expressly agreed in writing by us.

6. PACKING AND DELIVERY

- 6.1 **Protection:** You agree to adequately pack and protect the Goods against damage, destruction, and deterioration.
- 6.2 **Time:** You must deliver the Goods and/or provide the Services, no later than the time specified in the Purchase Order. If no time is specified in the Purchase Order, then you agree that this timeframe is a reasonable timeframe following the date that the Purchase Order is issued by us to you.
- 6.3 **Delay:** You must notify us of any actual or anticipated delay in Delivery of the Goods and/or provision of the Services, as soon as you become aware of the delay, or that a delay is likely to occur. You must also inform us of the cause and effect of the delay, together with what you are doing to minimise the delay.
- 6.4 After being notified of a delay, we will discuss the impact with you. If the delay is not your fault (or the fault of your contractor), we may, at our discretion, extend the time for meeting any affected obligation by a period we consider reasonable.
- 6.5 Where the delay is your fault (or the fault of your contractor), you must:
 - (a) commit all additional resources required to meet the required timeframe at your cost, provided it is commercially reasonable to do so; and
 - (b) where demanded by us, compensate us for unavoidable, reasonable costs directly incurred, due to the delay, provided we evidence these costs.
- 6.6 **Location:** Goods must be delivered to the location stated in the Purchase Order, or as directed by us.
- 6.7 **Documentation:** You will supply a delivery docket in each package of Goods. The delivery docket will detail the quantity and description of the Goods delivered to us. You will show the Purchase Order number on all packages, packing slips, advice notes, bills of lading, invoices and in all other documents or communications concerning the Purchase Order.
- 6.8 **No responsibility:** We accept no responsibility for the Delivery of the Goods, nor for packing materials or cases, which you agree is your responsibility.
- 6.9 **Receipt not acceptance:** The receipt or signature of a Delivery order by one of our officers, employees or agents is not acceptance of either the quality or quantity of any Goods.
- 6.10 **Rejection and Rectification:** If, in our opinion (acting reasonably), the Goods and/or Services do not comply with these Terms and/or do not conform with the Purchase Order, then we may refuse to accept the Goods and/or Services. Unless we expressly reject the Goods and/or Services, you will have the opportunity to rectify the issues for us to accept. If after rectifying the issues, the Goods and/or Services still do not comply with these Terms, we will be entitled to exercise our remedies under clause 9 of these Terms and at law.

7. WARRANTIES

- 7.1 **Goods Warranty:** In addition to all warranties implied by law, you warrant to us that the Goods will:
 - (a) be new and unused on Delivery;
 - (b) be of merchantable quality;
 - (c) be fit for the usual purposes for which the Goods are intended, and fit for any purpose made known to you;
 - (d) be free from any fault or defect (including any latent defect) in design, materials and workmanship and not emit any contaminant or Hazardous Substance, without our agreement or knowledge;
 - (e) conform with the requirements of the Purchase Order and these Terms;
 - (f) where applicable, be properly installed, integrated into, and compatible with our systems and other property, and not cause any damage;
 - (g) be unencumbered and free from any security interest, as defined in the PPSA; and

- (h) not infringe any third-party rights in Intellectual Property.
- 7.2 **Pass On:** You will, to the greatest extent possible, pass onto us the benefit of any warranty, assurance, or maintenance obligation (including a warranty from the manufacturer) that applies in respect of the Goods and Services.
- 7.3 **Recall:** You must notify us immediately if you become aware of any problem encountered in the manufacture, packaging, storage, or transport of the Goods that may have an adverse impact on the quality and/or safety of the Goods. You will provide us with all practicable assistance in dealing with any recall of the Goods.
- 7.4 **Services Warranty:** In addition to all warranties implied by law, you warrant to us that the Services will:
- be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons, and to the best industry standards;
 - be performed in a manner that minimises disruption to us, and our staff and students;
 - conform with the requirements of the Purchase Order and these Terms; and
 - be fit for their intended purpose.
- 7.5 **Hot Work:** You will ensure that any Hot Work is carried out in compliance with the Hot Work Policy.
- 8. HEALTH AND SAFETY**
- 8.1 **HSWA:** In providing us with the Goods and/or Services under these Terms, you will comply with the HSWA and have an adequate health and safety management plan in place, at all times.
- 8.2 **Hazardous Goods:** You must clearly indicate any Hazardous Substances in the Goods which may be released during the handling, installation, use or disposal of the Goods, which are or may be hazardous to the health and safety of any person, or the environment, by clearly marking the Goods and their packaging and by including appropriate prominently displayed precautions in documentation accompanying the Goods.
- 8.3 If the Goods are hazardous or dangerous, or contain any Hazardous Substances, then they must be transported by you (or your contractor) in accordance with all relevant legislation covering the handling and transportation of hazardous and dangerous goods.
- 9. DEFAULT AND CANCELLATION**
- 9.1 **Remedies:** If you breach any of the warranties contained in these Terms or in the Contract, then at our discretion (acting reasonably) and without prejudice to any other remedy or right that we have, we may:
- reject the Goods and/or Services (wholly or partially) and return the Goods to you, at your sole risk, cost and expense;
 - require you to replace, repair, reinstate, or resupply the Goods and/or reperform the Services (as the case may be), at your sole cost and expense, so that the Goods and/or Services conform with the Contract;
 - have the Goods replaced, repaired, reinstated or resupplied and/or the Services reperformed (as the case may be) by a third party, and recover the cost of doing so from you; and/or
 - suspend payment for the Goods and/or Services until the breach has been satisfactorily remedied.
- 9.2 **Set-off:** We may set-off any amount that you owe us under the Contract against any amount which we may owe you under the Contract.
- 9.3 **Mutual Cancellation:** Either party may cancel any Purchase Order at any time, on 30 days written notice, or immediately on written notice if either party has materially breached the Contract and failed to remedy that material breach within 7 Business Days of receiving written notice from the party alleging the breach, notifying the breach, and requiring it to be remedied.
- 9.4 **Dissolution:** Either party may immediately cancel any Purchase Order if either party: becomes bankrupt; ceases business; goes into liquidation (whether voluntary or not); becomes insolvent; or appoints a receiver or enters into a formal proposal for a compromise with creditors under the Companies Act 1993.
- 9.5 **No Failure:** No failure or delay on our part to exercise any of our rights regarding any default under the Contract by you, will prejudice our rights in connection with that default, or any subsequent default.
- 9.6 **Return:** If any Purchase Order is cancelled, you will return all payments made in relation to that Purchase Order to us, except in respect of any Services already provided. If, upon cancellation, we elect to keep, take or accept any Goods or Services, we will pay you for them, but no other compensation will be payable to you.
- 10. INDEMNITY, INSURANCE AND LIABILITY**
- 10.1 **Indemnity:** You indemnify us against all actions, proceedings, losses, damages, liabilities, costs, and expenses (including reasonable legal expenses) suffered or incurred by us in relation to any actual or threatened claim by or on behalf of any person for a breach of the warranties in clause 7.1(h).
- 10.2 **Liability:** To the maximum extent permitted by law, neither party will be liable to the other (in contract, tort (including negligence) or equity) for any damages of any kind arising out of or in connection with these Terms that are indirect, special or consequential. To the maximum extent permitted by law, our total aggregate liability to you under the Contract will be limited to \$10,000 NZD.
- 10.3 **Insurance:** Unless we agree otherwise, you must, at your cost, maintain a minimum level of public liability, professional indemnity and product liability insurance cover commensurate with your business (or such higher amount as we may reasonably require). These insurances must be held with a reputable insurer for the period you are providing the Goods and/or Services and for at least 3 years after the delivery of the Goods, and/or the completion of the Services. Upon receiving a request from us in writing (acting reasonably), you will provide us with evidence that you hold appropriate insurances and that the premiums have been fully paid.
- 11. CONFIDENTIALITY**
- 11.1 **Confidentiality:** You must treat all Confidential Information as strictly confidential, keep it secure at all times and only use it to the extent required for the proper performance of any Purchase Order and these Terms.
- 11.2 **No Advertisement:** You must not advertise, issue any press release or other statement to the media, or publish any materials concerning these Terms and our relationship (including on social media), without obtaining the prior written consent of our Events and Communications Team.
- 12. INTELLECTUAL PROPERTY**
- 12.1 **Pre-existing IP:** All Intellectual Property rights owned by either party prior to the supply of Goods and/or Services will remain the exclusive property of that party and Intellectual Property created by a party independently of the Goods and/or Services, remains the property of that party.
- 12.2 **New IP:** You agree that all Intellectual Property rights created by you or any of your employees, contractors or agents in the course of providing the Goods and/or Services to us will be owned by us (**New Intellectual Property**).
- 12.3 **Licence:** We both grant to one another an unrestricted, royalty-free, licence in perpetuity to copy or use the New Intellectual Property and (to the extent necessary, to use or alter the Services) any pre-existing intellectual property within the Services. The rights granted to you under this sub-clause are granted only to the extent necessary for you to provide the Services to us for the duration of the Contract, and may not be used for any other purpose.
- 13. COMPLIANCE**
- 13.1 **Reasonable Directions:** In providing us with the Goods and/or Services under these Terms, you must ensure that your employees, subcontractors and agents comply with all our health and safety, security, operational and site procedures, (including office conduct), as amended from time to time, when on our Campus. You also agree to follow all our reasonable directions, while on our Campus and treat all of our staff, students and other third parties on Campus with respect and dignity.
- 14. SUPPLIER PROPERTY**
- 14.1 **Disposal:** You will remove all rubbish, items, property, and equipment that is brought onto Campus, at your cost and expense. Any storage or disposal charges may be charged to you by us, if you leave rubbish, items, property or equipment on Campus, provided that the charges are reasonable, and we have first notified you that if you fail to comply with this clause, we may charge you.
- 14.2 **Risk:** We take no responsibility or accept any risk for any of your property or equipment left on our Campus.
- 15. RECORDS**
- 15.1 **Mutual Records:** We both agree to keep records to enable prompt and accurate verification of matters arising under these Terms. You will ensure that any contractors keep records, as necessary to demonstrate compliance with these Terms.
- 16. DISPUTES**
- 16.1 **Good Faith:** We must both attempt to settle any dispute under a Contract quickly, amicably and in good faith.
- 16.2 **Mediation:** If any dispute cannot be resolved within 15 Business Days of it being notified, then either party may refer the dispute to mediation. The date, terms and rules of the mediation will be decided by the President of the New Zealand Law Society.
- 16.3 **Obligations Continue:** If any dispute arises under a Contract, we both agree to continue performing our respective obligations to one another, until such time as the dispute is resolved.
- 16.4 **Urgent Relief:** Nothing in these Terms stops either of us from seeking urgent interlocutory or injunctive relief.
- 17. NOTICES**
- 17.1 **Notices:** Any notice to be given under a Contract must be in writing and must be delivered or sent by post or e-mail to our respective addresses for notices, as set out in the Purchase Order. You must email a copy of any legal notices to us at: procurement@canterbury.ac.nz.
- 18. GENERAL**
- 18.1 **Compliance with Laws:** You must comply with all laws and standards applicable to the supply of Goods and/or Services.
- 18.2 **Severability:** If any of these terms and conditions is or becomes invalid, unenforceable, or illegal, such invalidity, unenforceability or illegality will not affect the remaining terms and conditions, which will continue with full force and effect.
- 18.3 **No Partnership:** Nothing in a Contract creates a partnership relationship. You do not have authority to bind or represent us in any way. We do not have authority to bind or represent you in any way.
- 18.4 **No Assignment:** You must not assign, novate, subcontract or transfer any of your rights or obligations under the Contract without our prior consent in writing (not to be unreasonably or arbitrarily withheld). In the event that we consent to any subcontracting, you will remain responsible for the acts and omissions of the subcontractor, as if they were your own.
- 18.5 **Governing Law and Jurisdiction:** The Contract, these Terms and any Purchase Order is governed by New Zealand law and we both submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 18.6 **Variations:** Any variation to these Terms must be agreed in writing and be signed by both parties.
- 18.7 **Electronic Communications Act 2002:** The expression "in writing" and "written" includes any electronic communication, as defined in the Electronic Communications Act 2002, or any other enactment that replaces or supersedes this Act.
- 18.8 **UN Convention Excluded:** The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.
- 18.9 **Codes of Conduct:** In accepting these Terms, you agree to abide by the New Zealand Government Procurement Supplier Code of Conduct and our Staff Code of Conduct Policy (as amended and updated from time to time), which can be accessed at [Supplier Code of Conduct \(procurement.govt.nz\)](http://procurement.govt.nz) and [Staff Code of Conduct \(canterbury.ac.nz\)](http://canterbury.ac.nz).
- 18.10 **Survival:** The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5, 6.8 to 6.10, 7, 9 to 12, 14, and 16 to 18.1