



UNISA PURCHASE ORDER TERMS AND CONDITIONS

1. General

- 1.1 These Terms and Conditions (“Agreement”) shall apply to the order for goods or services placed by The University of South Africa (**the University**) with the Supplier as identified on the Purchase Order.
- 1.2 The reference to goods or services herein are as described in any other Agreement, the Tender specifications, or in terms of the Purchase Order in accordance with the above order of preference.
- 1.3 These Terms and Conditions are to be read and are accepted by the Supplier in addition to any terms specified in the Purchase Order and/or any attachment to it that is expressly incorporated in writing and terms contained in the University’s procurement policy available on www.unisa.ac.za/..... insofar as it relates to Supplier. No other terms or conditions apply to this Purchase Order under any circumstances except where:
 - a) the University first provides its agreement in writing; or
 - b) the University enters into a longer form agreement on the University’s terms and conditions where service levels and specification of goods, if applicable, are to be agreed to by way of a formal agreement if not specified in the Purchase Order.

2. Acceptance

- 2.1 The Supplier is taken to have accepted a Purchase Order if it notifies the University that it accepts the Purchase Order or delivers the goods and/or services described in the Purchase Order.
- 2.2 The Purchase Order once accepted, combined with these Terms and Conditions, will form a binding Agreement between the University and the Supplier.

3. Cancellation

- 3.1 The University may at any time before delivery of the goods or services under the Purchase Order, cancel or change the Purchase Order by written notice to the Supplier.
- 3.2 The University reserves the right to cancel a Purchase Order should the transaction under the Purchase Order continue for a period of more than 5 years from date of acceptance of the Purchase Order by the Supplier.
- 3.3 Under such circumstances, the University’s liability shall be limited to payment of the amount due for work performed up to and including the cancellation or changed date.
- 3.4 The Purchase Order is based on specific deliverables or items and are not related to the completion of a transaction or project and as such the University reserves the right not to continue with the Purchase Order in relation to the supply of the services or goods.

4. Fees and Invoices

- 4.1 In consideration for the provision of goods and/or services under these terms and conditions, the University agrees to pay to the Supplier the Fees specified in the Purchase Order upon the presentation of a tax invoice showing the Purchase Order number and other reference details as required by the University.
- 4.2 VAT (where applicable) shall be included in all fees and the Supplier shall ensure that it is registered as a vendor if legally required to do so.
- 4.3 Fixed tariffs shall be quoted by the Supplier and shall be inclusive of all costs such as insurance in transit, FOB import duties/taxes, packing and installation, handling, shipping and delivery charges.
- 4.4 Unless otherwise specified in the Purchase Order, the University agrees to pay the Supplier the Fees within (thirty) 30 days from the end of the month in which the invoice is received and accepted by the University and on completion of satisfactory delivery of goods/services as signed-off by an authorised representative of the University.
- 4.5 Claims for an increase in price due to a variation in the rates of exchange will only be considered if:
- a) it was a condition of the order;
 - b) the amount to be remitted overseas in foreign currency and the rate of exchange applied was stated in the order;
 - c) documentary proof of date of payment and the rate of exchange ruling at the time of payment is furnished; and
 - d) the order was satisfactorily executed within the stipulated delivery period.
- 4.6 The exchange rate if applicable, is calculated on the date that the Purchase Order is issued and may be re-calculated every 60 days thereafter subject to the above-mentioned conditions.
- 4.7 The University shall be entitled to set-off any liability for payment which the Supplier has to it against any liability for payment which it has to the Supplier, whether such liability is present or future.
- 4.8. Hindrance as a result of the Supplier's conduct, shall entitle the University to a discount of 10% on each Purchase Order transactional value.
- 4.9. Hindrance as a result of the University conduct, shall entitle the Supplier to a fee of 10% on each Purchase Order transactional value.
- 4.10 The University reserves the right to hold a maximum retention of not more than 50% on each Purchase Order transactional value until the goods and/or services are signed off as acceptable.
- 4.11 Any wasteful and unforeseen expenditure may vary at a maximum of 10% of the transactional amount which are to be already included in the Purchase Order.

5. Delivery, Inspection and Risk/Ownership

- 5.1 All goods and services shall be tendered by delivery to Purchaser at the time and place specified in the Purchase Order. If the Supplier fails to deliver or perform as and when required, the University, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights.

- 5.2 All goods and services delivered to the University for the first time, or on a re-occurring basis, will be rendered or delivered only after the date the Purchase Order is issued, or after the signing of an Agreement if applicable, failing which the Supplier shall render services and deliver the goods at its own risk. The University shall not be obliged to pay for such services or goods and the Supplier shall at its own costs remove goods and issue credit notes to the University for any invoices issued prior to the date of the Purchase Order.
- 5.3 The Supplier is responsible for maintaining and providing proof of delivery in the form of a delivery note signed by an authorised representative of the University.
- 5.4 After delivery of the goods or services, the University shall have the right within thirty (30) days from the date of delivery to inspect the goods or services. If all or any part of the goods or services are found to be non-conforming, the University may reject such non-conforming goods, whereupon such rejected goods shall at the University's discretion be refunded, repaired or replaced at no cost to the University.
- 5.5 All risk in and ownership of goods supplied to University will pass to University once the Supplier has delivered the goods to the place of destination specified in the Purchase Order.
- 5.6 All foreign imports/exports are subject to prevailing INCOTERMS, unless formally amended by written agreement.

6. Indemnity, Insurance and Warranties

- 6.1 The Supplier indemnifies the University, including its officers, employees and agents, against all direct losses, consequential and indirect losses and damages including those arising out of any third party claim it directly or indirectly sustains or incurs as a result of:
 - a) any negligent, unlawful or wilful act or omission of the Supplier or Supplier personnel; or
 - b) any negligent acts or omissions of any subcontractor engaged by the Supplier.
- 6.2 The Supplier shall effect and maintain through the term of the Agreement the following:
 - a) Worker's Compensation Policy as required by law; and
 - b) Public and Products Liability Insurance for any one occurrence and shall ensure that any subcontractor engaged by it is insured to a level commensurate with the insurance obligations of the Supplier under the Agreement.
- 6.3 The Supplier represents and warrants that:
 - a) it has all rights, title, licences, interests and property necessary to provide the goods and/or perform the services;
 - b) the Supplier personnel will have all necessary skill, knowledge and competence to perform the services;
 - c) the goods and/or services will be fit for the purposes intended;
 - d) if applicable, the goods and/or services will meet any agreed design and performance criteria and correspond with any sample;
 - e) the goods will be complete, accurate and free from material faults in design and free from defects in materials, workmanship and installation;

- f) the goods supplied and their packaging will comply with all statutory laws and regulations that may be applicable;
 - g) it will supply to the University all complete documentation associated with the use of the goods and/or services.
- 6.4 Goods and services not meeting the warranties shall at the University's election be refunded, repaired or replaced at no cost to the University.
- 6.5 All manufactured goods, chemicals or materials used by the Supplier shall comply with applicable requirements of the Occupational Safety Health Act. (Act No. 85 of 1993 and any standards thereunder).

7. Intellectual Property Rights (IPR)

- 7.1 Unless otherwise agreed between the parties all rights, title and interest in any IPR created in providing the goods and/or services shall be owned by the University. The Supplier hereby assigns all rights, title and interest it may have now or in the future in the IPR to the University.
- 7.2 IPR owned by a party prior to the date of the Agreement shall remain with that party. The Supplier grants to the University a permanent, irrevocable, royalty-free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt or communicate to the public the Supplier's pre-existing IPR in conjunction with the goods and/or services and any IPR created in providing the goods and/or services that will be owned by the Supplier.

8. Performance of Onsite Work

- 8.1 The Supplier shall become acquainted and comply with the University's rules and policies governing the delivery and storage of goods or performance of work at the University's sites so that the Supplier will not interfere with the University's operations.
- 8.2 Access to the University premises in executing the services or delivering goods are granted only after the date of the Purchase Order or signing of the Agreement, whichever is the later.
- 8.2 The Supplier shall not stop, delay or interfere with the University's work schedule without the prior approval of the University's authorised representative.
- 8.3 The Supplier shall take all precautions necessary to protect the University's equipment and other property from damage due to the Supplier's performance.

9. Termination and Jurisdiction

- 9.1 The University may terminate the Agreement by written notice to the Supplier:
- a) if the Supplier breaches a term of the Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so;
 - b) has offered, promised or given anyone who had to do with the placing of an order, any remuneration or other inducement in connection with the Supplier's acquisition of an order;
 - c) is not executing the delivery of the goods or services in a satisfactory manner;
 - d) is acting in a fraudulent or improper manner or in bad faith toward the University;
 - e) if the Supplier is, or becomes, subject to proceedings which may result in the Supplier becoming bankrupt, being placed under business rescue, wound up, or under voluntary administration.
- 9.2 The Agreement is governed by the laws of the Republic of South Africa.

10. Miscellaneous

- 10.1 The obligations of the parties under the Agreement, which by their nature would continue beyond the termination, cancellation or expiration of the Agreement, shall survive termination, cancellation or expiration of the Agreement.
- 10.2 The University reserves the right to retain other persons or entities to supply the goods and/or services including, but not limited to, any part of the goods and/or services.
- 10.3 Neither party shall hold itself as being:
- a) an agent, employee of the other party or in partnership; or
 - b) authorised to enter into any contract on behalf of the other party.
- 10.4 If there is an inconsistency between a provision in:
- a) A University contract entered into between the Supplier and the University for the goods and/or services;
 - b) Tender Specifications;
 - c) Purchase Orders;
 - d) Quotations; or
 - e) Supplier proposals, then the first-mentioned terms shall prevail in the order set out above.
- 10.5 No amendments to these Terms and Conditions will be binding on the parties unless agreed to in writing by the University and the Supplier.
- 10.6 Except as expressly provided in the Purchase Order, the Supplier may not assign any rights or interest or subcontract any obligations under the Agreement without the prior written consent of the University. Where the Supplier subcontracts any of its obligations under the Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

11. Confidential Information

- 11.1 The Supplier shall keep confidential and not disclose and shall procure that his/her employees keep confidential and do not disclose any information of a confidential nature obtained by him/her by reason of its appointment except information which is in the public domain otherwise than by reason of a breach of this provision; Confidential Information means all data and/or information exchanged between the parties for the purposes of the Agreement before, on or after the date of the Agreement relating to the operations, business, research and technology of the disclosing party.
- 11.2 The provisions of this paragraph shall apply during the continuance of the Supplier's appointment and after its termination howsoever arising.

12. Anti-corruption and Anti-bribery

- 12.1 The Supplier shall procure that the Supplier, its officers, employees' and agents shall:
- a) comply with all applicable Anti-Bribery and Corruption legislation;

- b) promptly report to the University any request or demand for any undue financial or other advantage of any kind offered in connection with the Supplier's appointment; and
- c) comply with the University's Code of Conduct and Supply Chain Management Policy as is in force from time to time

12.2 The Supplier shall adhere to the United Nations Global Compact (UNGC) principles which can be accessed on www.unisa.ac.za.

12.3 The Supplier acknowledges that the University is a Public Institution accountable to taxpayers and the Government and the Suppliers agrees to support the University in the execution and compliance of Section 217 of the Constitution of the Republic of South Africa. The University reserves the right to conduct an audit on the transaction where the Supplier is suspected of overreaching on pricing contrary to industry standards or for any reason where the Supplier's practises are construed as anti-competitive or corrupt.

13. Protection of Data

13.1 To the extent that the Supplier comes in possession of individual personal data owned or otherwise held by the University as a result of performing under the Purchase Order, the Supplier agrees to use such data, if at all, only to the extent required to perform its obligations under the Purchase Order and to abide by the requirements of the Protection of Personal Information Act 4 of 2013 regarding the protection and/or use of such data.

13.2 The Supplier shall be liable for any damages, penalties or fines imposed on the University on account of the Supplier's irregular use of individual personal data owned or otherwise held by the University.

14. Disqualification of Supplier for collusion

Reasonable grounds for believing that a Supplier is involved in more than one proposal for the same work will be cause for rejection of all proposals in which such Suppliers are believed to be involved. Any or all proposals will be rejected if there is reason to believe that collusion exists between Suppliers.

15. Dispute Resolution

15.1 Mediation

Should any dispute of any nature whatsoever arise out of, or in connection with or relating this Agreement, then the parties agree to first meet and use all their reasonable endeavours to negotiate in good faith a settlement of such dispute by way of mediation. Should such negotiations fail after 10 (ten) business days, or such longer period as agreed upon in writing, of referral of such dispute, the dispute will then be referred to arbitration.

15.2 Arbitration

15.2.1 Should the parties fail to settle the dispute pursuant to the provisions of clause 15.1, then any dispute, deadlock and/or difference between the parties may be referred to and be determined through arbitration in terms of the rules of the Arbitration Foundation of South Africa.

15.2.2 Upon such referral, the costs of and incidental to the referral and award shall be in the discretion of the arbitrator, who may determine the quantum of the costs and liability for payment of such costs.

15.2.3 The award of the arbitrator shall be final and binding on the parties and any party shall be entitled to apply to the Courts to have such an award made an order of court.

15.2.4 This clause shall not preclude the parties from obtaining interim relief on an urgent basis in a Court of competent jurisdiction pending the decision of the Arbitrator. To this end, the parties hereby consent to the jurisdiction of the North Gauteng High Court, Pretoria.

16. Breach

- 16.1 Should either party (the "defaulting party") commit a breach of any of the provisions of this Agreement of Lease, then the party who is not in breach (the "aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach.
- 16.2 If the defaulting party fails to comply with that notice within 30 (thirty) days of the receipt thereof, subject to any other provisions of this Agreement of Lease to the contrary, the aggrieved party shall be entitled to cancel this Agreement or to claim specific performance, in either event without prejudice to the aggrieved party's rights to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in common law or statute. Save for consequential damages, liability for damages shall be limited to the transactional value in respect of the relevant Purchase Order.

17. Public announcements

Any public announcements concerning the Supplier and/or University in respect of the Purchase Order is prohibited.

18. Notices and Addresses

- 18.1 All notices which are given by the parties may be given to it at the address set out on the front page of Purchase Order, at which address it chooses *domicilium citandi et executandi* (the physical address at which legal proceedings may be instituted) for all purposes hereunder.
- 18.2 All notices sent by either party to the other shall be delivered by hand.
- 18.3 All notices delivered by either party to the other as aforesaid to the respective addresses provided for in this Agreement shall be deemed to have been received by the addressee on the date of delivery or on the third business day after posting, as the case may be, unless the addressee proves the contrary.
- 18.4 Any party shall be entitled, by prior written notice to the other to change its address to such other address within the Republic of South Africa, provided that the change shall become effective only 14 (Fourteen) days after service of the written notice in question.