



Queensland University of Technology

Purchasing Conditions

1 Definitions

In this Purchase Contract:

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

Claim means a claim, action, demand, damage, loss, liability, cost, charge, expense (including legal costs on a full indemnity basis), outgoing, fine or payment.

Confidential Information in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

Deliverable means any goods or services to be supplied or performed by the Supplier as set out in the Purchase Order and includes all materials, documents, information and items developed by or on behalf of the Supplier or its Personnel in the course of or in connection with the supply in any form whatsoever (including electronic form) and includes all inventions, software, databases, models, drawings, plans, artwork, designs, logos, reports, advices, proposals and records.

Delivery Date means the date(s) specified in the Purchase Order.

Delivery Point means the place specified in the Purchase Order.

Dispute has the meaning given in clause 17.1.

Encumbrance means any interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property including a Security Interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth)).

Fees mean the amount specified in the Purchase Order.

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

Insolvency Event means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of

an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.

Intellectual Property Rights means all present and future rights in relation to copyright, trade marks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of the Purchase Contract, and whether in Australia or otherwise.

Law means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity, and any mandatory standards or industry codes of conduct.

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

Personnel means a party's officers, employees, agents, consultants, contractors and subcontractors.

Pre-Existing Materials means all materials, documents, information and items developed by or on behalf of the Supplier or QUT independently of this Purchase Contract.

Purchase Order means a purchase order issued by QUT in a form suitable to QUT in its absolute discretion.

Purchase Contract has the meaning given in clause 2.2.

QUT means Queensland University of Technology (ABN 83 791 724 622).

Supplier means the entity specified in the Purchase Order.

Term means the period of a Purchase Contract as described in clause 4.

2 Formation of Purchase Contract

- 2.1 If QUT issues a Purchase Order to the Supplier, it constitutes an offer by QUT to engage the Supplier to supply the Deliverables described in the Purchase Order on the terms of the Purchase Contract.
- 2.2 The following documents constitute the Purchase Contract in the following order of precedence:
- (a) the Purchase Order; and
 - (b) clauses 1 - 19 inclusive.
- 2.3 A Purchase Contract for the supply of the Deliverables is formed between the parties when the Supplier:
- (a) communicates (in writing or verbally) to QUT in a way that confirms or implies acceptance; or
 - (b) the Supplier supplies, or begins to supply, the Deliverables.
- 2.4 If there is an existing contract between the parties for the supply of the Deliverables, the parties acknowledge and agree that the terms of that contract prevail to the extent of any inconsistency with the terms of the Purchase Contract.

3 Issuing Purchase Orders

- 3.1 QUT is not liable to the Supplier for any costs, fees, payment or loss whether at Law, in equity or otherwise, for which a valid Purchase Order has not been issued by QUT. To avoid doubt, a Purchase Order will only be valid if it is completed in all material respects, contains a Purchase Order number and is issued by QUT.
- 3.2 The Supplier acknowledges and agrees that the Purchase Contract does not confer any exclusive rights to the Supplier to provide the Deliverables to QUT during the Term.
- 3.3 QUT may cancel or suspend the Purchase Contract without liability, at any time before delivery of the Deliverables by notice in writing to the Supplier.

4 Term

The Purchase Contract commences at the time and date when clause 2.3 is satisfied and continues until:

- (a) the date specified in the Purchase Order; or
- (b) if no end date is specified, once the Deliverables have been provided in accordance with the Purchase Contract.

5 Warranties

- 5.1 The Supplier represents and warrants that:
- (a) it has the right to supply the Deliverables to QUT;
 - (b) it will do all acts, matters and things that may be necessary for and incidental to the proper and efficient supply of the Deliverables;

- (c) it will ensure that the supply of the Deliverables at the Delivery Point causes as little disruption as possible to the business activities of QUT;
- (d) it will declare any conflict of interest prior to providing any Deliverables to QUT or, where Deliverables are already being provided, as soon as such a conflict comes to the attention of the Supplier;
- (e) title to the Deliverables will pass to QUT free of any Encumbrances;
- (f) it will ensure QUT obtains the benefit of all warranties given by all manufacturers, subcontractors, suppliers and other relevant third parties in relation to the Deliverables;
- (g) the supply of any Deliverables, and the use of those Deliverables, does not and will not:
 - (i) contravene any Law; or
 - (ii) infringe the rights of a third party (including any Intellectual Property Rights);
- (h) it and its Personnel will supply the Deliverables in a good, proper and workmanlike manner and will exercise the standard of care, skill, judgment and diligence reasonably expected of a contractor experienced in the supply of the same or similar Deliverables; and
- (i) it will comply, and will ensure that its Personnel comply, with all Laws and standards relating to the supply of the Deliverables, including QUT's standards, policies, procedures and directions, and obtain all necessary consents and approvals to supply the Deliverables.

5.2 The Supplier represents and warrants that the Deliverables will:

- (a) be free from defects, and errors or omissions in design, materials and workmanship;
- (b) comply with their specifications;
- (c) be newly manufactured and not second hand;
- (d) be able to be used, assembled, handled, stored, dismantled, decommissioned and disposed of without risk to the health or safety of any person;
- (e) be of good and merchantable quality; and
- (f) be fit for the purpose for which they are supplied.

5.3 During the Term, the Supplier must, at no additional charge and without prejudice to any other rights or remedies of QUT, repair or replace any Deliverables that do not comply with any of the applicable warranties.

6 Delivery requirements

6.1 The Supplier must:

- (a) supply the Deliverables to the Delivery Point on the Delivery Date in accordance with the Purchase Contract or as QUT may otherwise authorise or direct; and
- (b) if requested by QUT, provide an acknowledgement of the Purchase Contract to QUT prior to the Delivery Date.

6.2 Where the Deliverables are goods, the Supplier must also:

- (a) unload the Deliverables at the Delivery Point in accordance with QUT's directions; and
- (b) notify QUT of any unloading requirements for the Deliverables prior to the Date for Delivery.

6.3 Time is of the essence for the completion and delivery of the Deliverables by the Supplier.

6.4 If the Supplier foresees any delay in performance of the Purchase Contract, it must advise QUT in writing immediately.

7 Testing

7.1 Deliverables are subject to QUT's inspection and approval within a reasonable time after delivery.

7.2 If QUT rejects Deliverables that are goods, the Supplier must, at its cost, promptly collect and remove the rejected Deliverables or QUT may return the Deliverables to the Supplier at the Supplier's expense.

8 Title and risk

8.1 Title to the Deliverables passes to QUT upon the earlier of delivery or the payment of the Fees by QUT.

8.2 The Deliverables will be at the risk of the Supplier until the Deliverables are delivered to QUT.

8.3 The passing of ownership or the delivery of the Deliverables to QUT does not constitute acceptance and does not affect QUT's rights to reject the Deliverables under clause 7.1.

9 Invoicing and payment

9.1 The Fees are inclusive of all costs and expenses incurred by the Supplier and no further amounts are payable by QUT unless otherwise agreed in writing by QUT.

9.2 The Supplier may only submit a tax invoice to QUT once the Deliverables are delivered to QUT.

9.3 Subject to clauses 9.4 and 10, QUT will pay any correctly rendered undisputed invoice issued by the Supplier within 30 days from the date of receipt of that invoice.

9.4 An invoice is correctly rendered if it:

- (a) is a valid tax invoice in accordance with the GST Law;
- (b) specifies a correctly calculated amount;
- (c) specifies the Delivery Date;
- (d) states the Purchase Order number;
- (e) is set out in a way that allows QUT to ascertain the Deliverables and the amount payable in relation to those Deliverables;
- (f) is accompanied by verifying documentation, if required by QUT; and
- (g) is addressed and delivered to:
 - (i) the address specified on the Purchase Order; or
 - (ii) where no address is specified, **[insert address]**.

9.5 The Fees are exclusive of GST unless stated to the contrary in the Purchase Order.

9.6 If any part of any invoice is found to have been rendered incorrectly after payment has been made by QUT, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be.

9.7 Without limiting recourse to other available means, any overpayments by QUT may be offset against any amount subsequently due by QUT to the Supplier.

10 Disputed invoices

10.1 If QUT disputes the amount of any invoice, QUT may, on written notice to the Supplier, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.

10.2 The Supplier must continue to perform the Supplier's obligations under the Purchase Contract in the event of a dispute about an invoice, while that dispute is resolved.

10.3 QUT must:

- (a) pay any non-disputed amounts in accordance with the Purchase Contract; and
- (b) promptly pay any disputed amounts that are subsequently found to be correctly payable.

11 Intellectual Property Rights

11.1 *Pre-Existing Material*

- (a) No change in ownership of the Intellectual Property Rights in any Pre-Existing Materials is effected by this Purchase Contract.
- (b) The Supplier grants to QUT a world-wide, non-exclusive, royalty free, perpetual, irrevocable and transferable licence (including a right of sub-

- licence) to use and exploit the Intellectual Property Rights in the Supplier's Pre-Existing Materials to the extent required to exercise its Intellectual Property Rights in the Deliverables.
- (c) QUT grants to the Supplier a personal, royalty free, non-exclusive, non-transferrable licence for the Term to use QUT's Pre-Existing Materials only to the extent required to provide the Deliverables to QUT, without the right to grant a further sub-licence.
- 11.2 Deliverables**
- (a) The Supplier absolutely and unconditionally assigns, and must procure that Supplier's Personnel assign, to QUT all Intellectual Property Rights in any Deliverables immediately upon creation, free of all Encumbrances and third party rights.
- (b) The Supplier must, at its own cost, do all things necessary to give effect to the assignment in clause 11.2(a), including executing any required documents or effecting any required registrations.
- (c) QUT grants to the Supplier a personal, royalty free, non-exclusive, non-transferable licence for the Term to use the Deliverables only to the extent required to provide the goods and services, without the right to grant a further sub-licence.
- 12 Confidentiality**
- 12.1 Each party and its Personnel must not disclose Confidential Information of the other party without the first party's prior written consent, unless such disclosure is required by Law or a stock exchange.
- 12.2 Each party must only use the Confidential Information of the other party for the purpose for which it was disclosed in connection with the Purchase Contract.
- 13 Privacy**
- 13.1 If the Supplier collects or has access to Personal Information in order to provide the Deliverables, the Supplier must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under the Purchase Contract, as if the Supplier was QUT.
- 13.2 Nothing in this clause 13 is intended to limit any obligation of the Supplier under the *Privacy Act 1988* (Cth) or the *Information Privacy Act 2009* (Qld) (as applicable), that the Supplier may have as an organisation with respect to Personal Information.
- 14 Indemnities**
- 14.1 The Supplier indemnifies QUT and its Personnel from and against any Claim QUT or its Personnel suffers or incurs arising out of or in connection with:
- (a) any breach of the Purchase Contract by the Supplier;
- (b) the death or personal injury of any person;
- (c) loss of, or damage to, any property;
- (d) any breach of Law;
- (e) any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights); and
- (f) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation,
- to the extent caused or contributed to by any act or omission of the Supplier or its Personnel.
- 15 Liability**
- QUT's maximum aggregate liability to the Supplier in connection with the Purchase Contract is limited to the amount of the Fees payable under the Purchase Contract.
- 16 Insurance**
- 16.1 The Supplier must effect and maintain in a form appropriate to the Supplier's activities and with an APRA approved insurer, the following insurances:
- (a) public and product liability: [\$10 million any one occurrence, and in the annual aggregate in respect of product liability only];
- (b) professional indemnity: [\$5 million any one claim and in the annual aggregate]; and
- (c) workers' compensation: as required by Law.
- 16.2 The Supplier must provide, on QUT's request, certificates of currency and such other evidence satisfactory to QUT of insurance coverage specified in this clause 16.
- 16.3 The Supplier must:
- (a) effect the workers' compensation and public liability insurance before commencing the supply of any Deliverables and maintain them until the Purchase Contract is terminated or expired; and
- (b) effect the professional indemnity insurance before commencing the supply of any Deliverables and maintain it for not less than 3 years after the Purchase Contract is terminated or expired.
- 17 Dispute resolution**
- 17.1 Neither party will commence court proceedings or action against the other party under or in connection with this Purchase Contract (**Dispute**) (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute in accordance with this clause 17.

- 17.2 The parties will attempt to resolve any Dispute as follows:
- (a) either party may notify the other party in writing of the occurrence of a Dispute and the parties must meet within 5 Business Days or such other time as agreed to discuss and attempt to resolve the Dispute;
 - (b) failing resolution of the Dispute within 10 Business Days after the first meeting between the parties in accordance with 17.2(a), the parties may agree to refer the Dispute for mediation to be conducted in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines and with a mediator as agreed by the parties or, failing agreement, as appointed by the CEO of the ACDC. If the parties do not agree to do so, either party may commence legal proceedings.
- 17.3 The parties must continue to perform their obligations under this Purchase Contract while any Dispute is being resolved in accordance with this clause 17, except that where the Dispute relates to an invoice, QUT may withhold payment of the disputed portion of the invoice until the Dispute is resolved.
- 18 Termination**
- 18.1 QUT may terminate the Purchase Contract immediately upon written notice to the Supplier, if:
- (a) the Supplier breaches any obligation under the Purchase Contract which is capable of remedy, and does not remedy that breach within **5** days of receipt of a notice from QUT specifying the breach and requiring it to be remedied; or
- [Note to QUT: The remedy period in the Goods and Services Agreement is 14 Business Days. We have shortened the remedy period for the Purchase Contract to 5 Business Days, given the short-term nature of Purchase Contracts. QUT to confirm it is comfortable with this approach or whether it would prefer the remedy period to be consistent.]***
- (b) the Supplier commits a breach of the Purchase Contract which is incapable of remedy.
 - (c) the Supplier does anything that materially damages or is likely to materially damage the brand or reputation of QUT;
 - (d) the Supplier or any of its Personnel commit any act of fraud or dishonesty in relation to the Purchase Contract; or
 - (e) an Insolvency Event occurs in relation to the Supplier.
- 18.2 QUT may at any time on at least **14** days' written notice to the Supplier terminate the Purchase Contract without

cause, in which case QUT's sole liability will be to pay the Supplier for all Goods, Services and Deliverables provided up to the effective date of termination.

[Note to QUT: Termination for convenience in the Goods and Services Agreement is on 30 days' written notice. We have shortened the remedy period for the Purchase Contract to 14 days' written notice, given the short-term nature of Purchase Contracts. QUT to confirm it is comfortable with this approach or whether it would prefer the remedy period to be consistent.]

- 18.3 Upon termination or expiry, the Supplier must provide all reasonable assistance necessary to enable the transfer of QUT's property and all related data, documentation and records to QUT or a third party nominated by QUT at no cost to QUT.
- 18.4 Clauses 11, 12, 13, 14, 15, 17, 18.3 and 18.4 survive termination or expiry of the Purchase Contract.
- 19 General**
- 19.1 Notices, approvals, consents or other communications in connection with the Purchase Contract must be in writing and sent by prepaid post or fax to:
- (a) a party's address as specified in the Purchase Order; or
 - (b) in the case of QUT, where no address is specified, **[insert address]**.
- 19.2 The Supplier will not subcontract its obligations under the Purchase Contract without QUT's prior written consent.
- 19.3 The Supplier must not assign or novate any of its rights or obligations under the Purchase Contract without QUT's prior written consent.
- 19.4 QUT may, on reasonable notice to the Supplier, assign or novate this Purchase Contract to another party without the approval of the Supplier.
- 19.5 Nothing in the Purchase Contract gives rise to any relationship of agency, partnership, employment or otherwise between the parties.
- 19.6 QUT may by notice in writing to the Supplier reduce any Fees or other charges or costs payable to the Supplier under the Purchase Contract by any fee, credit, rebate or other amount which is payable to QUT under or in connection with the Purchase Contract.
- 19.7 Subject to clause 2.4, the Purchase Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter. The parties irrevocably agree that, subject to clause 2.4, any other terms or conditions that may be annexed to or otherwise incorporated into any invoice, delivery document or other document exchanged between the parties in connection

with the Purchase Contract do not apply to the supply of the Deliverables by the Supplier to QUT.

- 19.8 Each party must promptly do whatever any other party reasonably requires of it to give effect to the Purchase Contract and to perform its obligations under the Purchase Contract.
- 19.9 No waiver of a right or remedy under the Purchase Contract is effective unless it is in writing and signed by the party granting it.
- 19.10 No variation of the Purchase Contract is effective unless made in writing and signed by each party.
- 19.11 The Purchase Contract is governed by the laws of Queensland and each party submits to the exclusive jurisdiction of the courts of Queensland.