



**CHARLES STURT UNIVERSITY**

**STANDARD TERMS AND CONDITIONS OF  
PURCHASE**

Revision Date: Aug 2010

## **1. GENERAL**

These Terms and Conditions apply to the order for goods ("Goods") or services ("Services") placed by Charles Sturt University ("the University") as described on the front of this purchase order ("Purchase Order"). They are to be read as in addition to any terms specified on the front of this Purchase Order and/or any attachment to it that is expressly incorporated in writing. No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by the University staff member with the actual delegated authority to approve any such amendments.

## **2. OFFER AND ACCEPTANCE**

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. The Purchase Order once accepted, combined with these Terms and Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties ("Agreement").

## **3. CANCELLATION AND CHANGES**

The University may at any time before delivery change or cancel the Purchase Order. If the Supplier has already incurred expense in arranging for the order or delivery of the Goods and/or Services specified in the first Purchase Order, the University agrees to pay the Supplier's reasonable costs or expenses incurred. If the University has changed the Purchase Order and any change causes an increase or decrease in the cost of the Goods and/or Services, or time required to deliver the Goods and/or Services, an equitable adjustment must be made, appropriate to the circumstances.

## **4. DELIVERY, ACCEPTANCE AND TITLE**

If the time period for delivery to the University is specified on the front of this Purchase Order, then time will be of the essence under this agreement. Payment of any invoice by the University will not be deemed acceptance of any Goods and/or Services, but rather such Goods and/or Services will be subject to a 4 month period of inspection, testing, acceptance or rejection by the University. The property and risk in the Goods will pass to the University when they are delivered to the University.

## **5. SUB-CONTRACTING**

Except as expressly provided in the Purchase Order, the Supplier may not sub-contract any obligations under this Agreement without the prior written consent of the University. Where the Supplier sub-contracts any of its obligations under this Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

## **6. FEES AND INVOICES**

In consideration of the provision of Goods and/or Services under this Agreement, the University agrees to pay to the Supplier the fees specified in the Purchase Order ("Fees"). Unless otherwise specified in the Purchase Order, the University agrees to pay the Supplier the Fees within 30 days of receipt and acceptance of an invoice by the University. If GST is payable in connection with the Goods and/or Services to be supplied under this Agreement, then the Supplier irrevocably warrants and agrees that the Fees payable to it under this Agreement and specified in the Purchase Order is the GST inclusive price of those Goods and/or Services unless otherwise agreed in the Purchase Order.

## **7. INDEMNITY**

The Supplier indemnifies the University against all losses the University directly or indirectly sustains or incurs as a result of:

- a) any negligent, unlawful or wilful act or omission of the Supplier, Supplier personnel or any subcontractor engaged by the Supplier;
- b) any infringement of the intellectual property rights ("IPRs") or moral rights of a third party arising out of the provision or use of the Goods and/or Service,

except to the extent that any negligent act or omission of the University contributed to the relevant liability.

## **8. WARRANTIES**

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 experience, skill, knowledge and competence to perform the Services;
- c) the Goods and/or Services will be fit for the purposes intended;
- c) if applicable, the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;
- d) the Goods will be complete, accurate and free from material faults in design and free from defects in materials, workmanship and installation;
- e) as far as it is aware it is entitled to licence any IPRs transferred to the University under this Agreement;
- f) the University's use of any Background IPRs and/or Project IPRs in the Goods and/or Services ("Warranted Materials") will not infringe the IPRs of any person; and
- g) it will supply to the University in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services.

## **9. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION**

- 9.1 All rights, title and interest in any IPRs created in providing the Goods and/or Services (Project IPRs) will be owned by the University, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to the University.
- 9.2 The IPRs owned by a party prior to the date of this Agreement (Background IPRs) remain with the contributing party.
- 9.3 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 and exploit the Supplier's Background IPRs in conjunction with the Goods and/or Services, and the Project IPRs.
- 9.4 Each party ('recipient') must keep any Confidential Information disclosed to it confidential and must not deal with it in any way that might prejudice its confidentiality. These obligations continue indefinitely beyond the end of this Agreement.

## 10. MISCELLANEOUS

10.1 The University may terminate this Agreement by written notice to the Supplier:

- a) if the Supplier breaches a terms of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so; or
- b) if the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.

10.2 This Agreement is governed by the law in force in New South Wales.

10.3 Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this Agreement.

10.4 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.

10.5 The Supplier may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the University.

10.6 A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties intended to be bound. A failure of a party to exercise a right arising out of this Agreement does not constitute a waiver of that right.

10.7 If the Supplier is required to provide any Services within any lands or buildings owned or occupied by the University, then the Supplier must observe the University's by-laws, rules and policies.