

JAMES COOK UNIVERSITY TERMS AND CONDITIONS OF ORDER

1. General

These are the terms and conditions (the "Conditions") referred to in the official James Cook University ("the University") purchase order ("Purchase Order"). These Conditions apply to any contract entered into by the University issuing a purchase order to the nominated supplier ("the Supplier"), whether as an offer, or acceptance of an offer ("the Contract"). Subject to clause 2, these Conditions will prevail in any conflict between them and the terms of any offer or acceptance by the Supplier.

2. Special Conditions

Where Special Conditions are included in the Contract, the Purchase Order or the Request for Offer and are agreed to by the Supplier and these Special Conditions are inconsistent with these Conditions, the former will, to the extent of the inconsistency, prevail.

3. Packing

The Supplier is responsible for ensuring that the goods are packed so as to ensure safe delivery.

4. Delivery

Delivery of the goods must be made at the time, place and in the manner specified in the Purchase Order. The University can specify in writing a later time for delivery.

5. Quality

The goods must be delivered free from defects in materials and workmanship, and at least of merchantable quality. The University can inspect the goods at any time prior to acceptance and reject any goods found not to be in accordance with the Contract. After acceptance the University can reject goods for any nonconformity with the Contract that could not have been discovered by reasonable inspection before acceptance. The University will not be liable to pay for any rejected goods or for any damage done to, or costs arising from, inspection or rejection of the goods. If the University rejects any goods, the Supplier must, without prejudice to the University's rights otherwise arising under the Contract or the general law, comply with the University's wishes to:

- a) replace, without cost to the University, the rejected goods with goods in all respects in accordance with the Contract;
- b) refund any payment for the rejected goods; or
- c) repair the goods, on site or otherwise, to the satisfaction of the University; and, in the case of (a) or (b), must remove the rejected goods at the Supplier's expense.

6. Passing of Property

Subject to clauses (4) and (5), property in, and risk of loss of or damage to, the goods passes to the University on delivery to the University.

7. Warranty

Where the University gives prompt notice of any defect or omission discovered in goods during any warranty period, the Supplier must correct that defect or omission without delay and at no cost to the University. The Supplier must meet all costs of and incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

8. Inclusive Price

The price of the goods stated in the Contract includes:

- a) all taxes, duties and other imposts for which the Supplier is liable;
- b) all amounts payable for the use (whether in course of manufacture or usage of the goods) of patents, copyright, registered designs, trademarks and other intellectual property rights; and
- c) all charges for supply of the goods; and no extra charges will be made for testing, inspection or packing. The Supplier indemnifies the University against all loss, damage or expense arising in respect of any action or claim for alleged infringement of any patent, copyright, registered design, trade mark or any other intellectual property rights, by reason of the purchase, possession or use of the goods.

9. Assignment

The Supplier must not, without consent in writing of the University, assign the Supplier's rights or obligations under the Contract.

10. Subcontracting

The Supplier must not, without consent in writing of the University, subcontract the whole or any part of the work of manufacture or supply of the goods. The Supplier will be liable to the University for the acts and omissions of any subcontractor as if those were the acts or omissions of the Supplier.

11. Applicable Law

The Contract will be governed by and construed in accordance with the law in force in the State of Queensland.

12. Payment

Subject to clause 5, the University will pay for the goods when property to the goods has passed to the University and when the University has processed a correctly rendered invoice. The University's standard payment terms are that payment is made in the payment run following the due date for payment. Unless agreed otherwise in writing, an invoice will be due for payment 30 days after the date of the invoice. EFT payment runs are processed weekly for all payees. Suppliers can minimize delays in these processes by:

- a) sending the invoice to the address indicated on the Purchase Order (not to the accounts payable section);
- b) correctly identifying the Purchase Order reference number and, where necessary,
- c) attaching any documentation required to substantiate the amount claimed.

The University does not make payments to suppliers by cheque.

13. Termination

If the Supplier:

- a) fails to deliver the goods by the date required by the Contract;
- b) is in breach of any other material term of the Contract;
- c) being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a Deed of Assignment or Deed of Arrangement under Part 10 of the Bankruptcy Act 1966 as amended or a creditor accepts a composition under that Act or any analogous overseas law; or
- d) being a corporation (other than for the purpose of reconstruction or amalgamation);
 - i. is the subject of a compromise or arrangement with its creditors;
 - ii. in respect of property of which a receiver or a receiver and manager is appointed; or
 - iii. in respect of which a provisional liquidator or liquidator is appointed; the University can, without prejudice to any other rights and remedies it has under the Contract or

otherwise, terminate the Contract in whole or in part by notice in writing to the Supplier.

On such termination, the University can:

- a) cease payments under the Contract;
- b) recover from the Supplier all sums paid for undelivered goods;
- c) purchase similar goods from alternative suppliers; and
- d) claim, by way of indemnity from the Supplier, any loss incurred.

14. Health, Safety and Environment

The Supplier warrants (without limiting any other warranties or conditions implied by law) that all Goods have been produced, sold and delivered to the University in compliance with all applicable laws (including all work health and safety and electrical safety legislation, codes of conduct and the University's Workplace Health & Safety and Electrical Safety requirements) (Applicable Laws) and all Services have been performed by appropriately qualified personnel, with due skill and in compliance with all Applicable Laws, environmental protection requirements and the University's site requirements. The Supplier must indemnify the University against any loss or damage suffered or incurred by the University in connection with any breach of this clause.

15. Interpretation

In these Standard Conditions:

"manufacture" includes grow, extract, produce, process and/or assemble;

"goods" includes materials, plant, equipment and/or associated services or the provision of services alone.