

Purchase Order Terms and Conditions

1 Application of these Terms and Conditions

- 1.1 These Terms and Conditions apply to all Purchase Orders for Goods and Services issued by the Technical and Further Education Commission (**TAFE NSW**) where there is no existing written agreement in place between TAFE NSW and you that applies to the supply of those Goods and Services.
- 1.2 Your acceptance of a Purchase Order to supply Goods and/or Services constitutes your acceptance of these Terms and Conditions. Any terms and conditions used by you in connection with supplying the Goods or Services (whether included or referenced in any invoice, quote, proposal or other document) are excluded.

2 Supply of Goods and Services

Packaging

- 2.1 You must ensure that the Goods are packaged, marked and labelled in accordance with all applicable laws. Goods must be packed with appropriate packing material to ensure its safe delivery.

Delivery

- 2.2 You must deliver the Goods and Services at the time, place and in the manner specified in the Purchase Order or otherwise directed by TAFE NSW (at any time) in writing.
- 2.3 You must keep TAFE NSW informed of any delays or other matter that may affect the delivery of the Goods or Services. TAFE NSW may in its absolute discretion specify in writing a later time for delivery.

Quality

- 2.4 You must, and all Goods and Services you supply must, comply with all applicable laws, regulations, codes and standards. All Goods and Services must be supplied in accordance with this Agreement, including any performance criteria or specifications specified in the Purchase Order.
- 2.5 Goods must be new (unless otherwise specified in the Purchase Order), fit for their intended purpose, free from damage or defects in workmanship and materials, and of merchantable quality. You must assign to TAFE NSW the benefit of any warranty or guarantee given by the manufacturer in respect of the Goods.
- 2.6 Services must be performed to a high standard of professional care and skill by appropriately trained and qualified personnel.
- 2.7 Without limiting any other rights TAFE NSW may have, TAFE NSW may (at any time) reject any Goods or Services which do not comply with this Agreement, even if TAFE NSW has previously inspected and/or accepted them. If any Goods or Services are rejected by TAFE NSW, you must (at TAFE NSW's option) promptly:
- (a) replace, repair or re-supply them at your cost; or
 - (b) refund to TAFE NSW any amount TAFE NSW has paid for them.

Title and risk

- 2.8 Title in the Goods passes to TAFE NSW on the earlier of delivery or payment by TAFE NSW for the Goods in full. Risk of loss or damage of the Goods passes to TAFE NSW on delivery.
- 2.9 You warrant that:
- (a) you have complete ownership of the Goods, free of any liens, charges, security interests, encumbrances or other third party interests; and
 - (b) you will not infringe the intellectual property rights or moral rights of any person in performing your obligations under this Agreement.
- 2.10 Any intellectual property rights created from performing your obligations under this Agreement vest in, and are assigned to, TAFE NSW upon creation.

3 Cancellations and Changes

- 3.1 TAFE NSW may by written notice to you:
- (a) change or cancel a Purchase Order at any time before delivery; or

- (b) cancel a Purchase Order after delivery if the Goods or Services are not in accordance with the Purchase Order (including where Goods are damaged or wrong quantities are delivered) or if you otherwise breach this Agreement.

4 Fees and Payment

- 4.1 The fees for the Goods and Services are those specified in the Purchase Order.
- 4.2 Unless a Purchase Order expressly states otherwise, all fees are in Australian dollars and are inclusive of all taxes (including any applicable GST), duties; and packing, insurance and delivery charges.
- 4.3 TAFE NSW will pay all correctly rendered invoices within 30 days of receiving your invoice. An invoice is correctly rendered if it is correctly addressed, identifies the Goods and Services for which payment is being invoiced; identifies the Purchase Order number; is a tax invoice for GST purposes and where requested, is accompanied by documentation substantiating the amount claimed.
- 4.4 If TAFE NSW disputes an invoiced amount, TAFE NSW need not pay the disputed amount until the dispute is resolved.
- 4.5 Without limiting any other rights TAFE NSW may have, TAFE NSW may deduct from your invoice any amount you owe TAFE NSW.

GST

- 4.6 If a supply under this Agreement is subject to GST and the consideration payable for the supply is exclusive of GST, and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the applicable GST amount to the supplier (without deduction or set-off) at the same time as the consideration for the supply is payable. Terms used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

5 Confidentiality and Privacy

Confidentiality

- 5.1 Each party must keep confidential any technical and commercial information disclosed to it by the other party and the arrangements between them (**Confidential Information**) and will only use the Confidential Information for purposes relating to this Agreement, except that a party may disclose the other party's Confidential Information:
- (a) with the other party's written consent;
 - (b) to its Personnel and professional adviser's on a 'need-to-know' and confidential basis;
 - (c) as required by law or the rules of any stock exchange; or
 - (d) to any relevant Government Minister or authority as required.

Privacy

- 5.2 If TAFE NSW collects personal information (as that term is defined in the *Privacy and Personal Information Protection Act 1998* (NSW)) in connection with this Agreement, you agree that TAFE NSW may collect, hold, use and disclose such personal information in accordance with TAFE NSW's Privacy Policy or as permitted by law. A copy of TAFE NSW's Privacy Policy is available at www.tafensw.edu.au/privacy.

6 Indemnity and Insurance

- 6.1 You indemnify TAFE NSW and its Personnel against all loss, damage, claim, expense and liability suffered or incurred by TAFE NSW or its Personnel, arising from or in connection with:
- (a) your breach of this Agreement;
 - (b) any Goods or Services you supply;
 - (c) any negligent, wilfully wrong or unlawful act or omission by you or your Personnel; and
 - (d) any claim by a third party that the Goods or Services infringe their intellectual property rights or moral rights.
- 6.2 You must effect and maintain appropriate insurance policies for the Goods or Services you supply. On request by TAFE NSW, you must provide evidence of your insurance to TAFE NSW's satisfaction.

7 Subcontracting

- 7.1 You must not subcontract any of your obligations under this Agreement without the prior written consent of TAFE NSW, which TAFE NSW may grant or withhold in its absolute discretion.

- 7.2 You will be liable for all acts and omissions of any subcontractor as if they were your acts or omissions.

8 Termination

- 8.1 Without limiting any other rights TAFE NSW may have, TAFE NSW may terminate this Agreement if:
- (a) you fail to deliver the Goods or Services by the required date;
 - (b) you breach any term of this Agreement; or
 - (c) you become or threaten to become insolvent or bankrupt or enter into a compromise or arrangement with your creditors or any form of external administration.
- 8.2 Upon such termination, TAFE NSW may recover from you any amounts paid for Goods or Services not yet supplied.
- 8.3 Termination of this Agreement does not affect any accrued rights or remedies a party may have.

9 Dispute Resolution

- 9.1 If a dispute arises under this Agreement, the parties must attempt to resolve the dispute in good faith. If the parties are unable to resolve the dispute within 30 days, they must try to resolve it by mediation administered by the Australian Disputes Centre in accordance with its Commercial Mediation Guidelines. Each party must follow this dispute resolution process before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief). Notwithstanding any dispute, the parties must continue to perform their obligations under this Agreement.

10 General

Entire agreement

- 10.1 The Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes any prior understanding, representation or agreement between the parties.

Governing law

- 10.2 The Agreement is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

Relationship of the parties

- 10.3 The relationship between the parties is that of independent contractors and nothing in this Agreement creates an employer/employee relationship, agency, partnership or joint venture between the parties.

Variation

- 10.4 This Agreement may only be varied by written agreement between the parties.

Severability

- 10.5 If any clause (or part of any clause) in this Agreement is held by a court to be illegal, void or unenforceable, that clause (or part of a clause) is to be regarded as having been deleted from this Agreement, and this Agreement otherwise remains in full force and effect.

Waiver of rights

- 10.6 A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or law, does not waive the right or remedy. A waiver of a breach of this Agreement does not waive any other breach.

Assignment

- 10.7 You must not assign or otherwise deal with your rights or obligations under this Agreement without the prior written consent of TAFE NSW.

11 Definitions and Interpretation

Definitions

- 11.1 In this Agreement, unless otherwise stated:

Agreement means these Terms and Conditions and a Purchase Order.

Goods mean the goods specified in a Purchase Order.

Personnel of a party, means its officers, employees, agents, contractors and subcontractors.

Purchase Order means a purchase order issued by TAFE NSW for Goods and/or Services.

Services mean the services specified in a Purchase Order.

Interpretation

11.2 In this Agreement, unless otherwise stated:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a statute, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to a party includes a reference to its executors, administrators, successors, substitutes and permitted assigns;
- (d) the singular includes the plural, and vice versa;
- (e) “includes”, “including”, “for example”, “such as” and similar terms are not words of limitation; and
- (f) a reference to “\$” or “dollars” is a reference to Australian currency.