THE UNIVERSITY OF AUCKLAND – CONDITIONS OF PURCHASE

DEFINITION
1.1 “Confidential Information” means information relating to business affairs, including research materials, trade secrets, know-how (including drawings, patterns, gauges, samples, and specifications) and the fact that the Contract or Order exists.
1.2 “Contract” means a purchase agreement made by the acceptance of an Order and includes these terms of purchase and any other terms which the parties have agreed in writing will apply to the products.
1.3 “Delivery” means the delivery of the Product in good order and condition to a location nominated by the University and in the case of Products which are Work means the completion of the Work to the University’s satisfaction at a location nominated by such. “Deliver” has a corresponding meaning.
1.4 “Order” means a University purchase which may be placed from time to time containing a reference to these terms of purchase.
1.5 “Products” means the goods specified in the Order and all parts or components of those goods and, where the context allows, the work to be done by you as specified in the Order.
1.6 “University” means the University of Auckland.
1.7 “You” and “Your” means the vendor or supplier to whom the Order is issued.
1.8 “Work” means the service to be carried out by you as specified in the Order.

FORMATION OF THE CONTRACT
2.1 Orders may be placed by any Faculty, Department or other branch or agency of the University. In all such cases the University is the principal contracting party and is solely responsible for the obligations arising on the acceptance of the Order.
2.2 The Order is liable to cancellation unless accepted by your written acknowledgment or delivery within 10 working days of the date of the order.
2.3 In any conflict between your terms of supply and these Conditions of Purchase these Conditions will prevail unless the University expressly agrees otherwise in writing.

QUANTITY FORECASTS
3. While the University may give you estimates of the University’s future requirements of the Products, these estimates may prove to be inaccurate and you confirm that you will not rely on them in any circumstances.

MARKING OF PRODUCTS, TERMS OF PAYMENT
4.1 You must:
(a) on Delivery of the Products, send detailed advice notes (packing slips), which must accompany the Products to each delivery point and you must send GST invoices which comply with the Inland Revenue Department’s standards to Invoices@auckland.ac.nz.
(b) Clearly indicate any substances in the Products which may be released during the handling, installation, use or disposal of the Products which are or may be hazardous to human health, animal health or the environment by clearly marking those Products and by including appropriate and prominent precautions in documentation accompanying the Products;
(c) mark the University’s order numbers and any part numbers on all invoices, packing slips, advice notes, statements, correspondence, as a pre-requisite to the University accepting delivery and making payment;
(d) mark bar codes and other identifying information on the Products and packages and packaging for the Products, as required by the University.
4.2 The University will pay for the Products / Work by the 20th day of the month following delivery and receipt of goods or services. The payment date will be taken from the date of invoice (unless otherwise agreed), provided that no term of the Contract has been breached.

PACKING AND DELIVERY
5.1 You must have a valid Purchase Order Number before you supply Products to the University. Products supplied against an invalid Purchase Order or without packing slips marked with the number of a valid Purchase Order will be returned at your expense.
5.2 You will adequately pack and protect the Product against damage and deterioration and you must Deliver the Product not later than the time/s specified in the order. Time will be of the essence.
5.3 The University accepts no responsibility for the Delivery of the Products (unless otherwise agreed) nor for packing materials or cases.

PASSING OF TITLE AND RISK
6. Risk and title to the Products will remain with you until the Products have been Delivered to the University when title and risk will pass to the University.

WARRANTIES
7.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, you warrant to the University and to any purchaser of the Products from the University that:
(a) at the time of Delivery the Product will be new and unused (unless otherwise agreed by the University) and of merchandise quality, fit for the usual purposes for which they are intended and fit for any particular purpose made known to you;
(b) the Product will comply with any agreed specifications and applicable statutory requirements;
(d) the Products will be free of any security interest, lien or other encumbrance;
(e) the Product will not infringe nor violate any intellectual property rights;
(f) the Products will be Delivered within a reasonable time where a time for Delivery is not specified in the Order;
(g) you have the right to supply the Products; and
(h) the work will be performed by persons with the requisite skills and experience.
7.2 You will not be responsible to any purchaser of the Products from the University for a breach of Clause 7.1 which is due to an event occurring after Delivery of the Product and which is outside of your reasonable control.

DEFAULT AND CANCELLATION
8.1 If you breach any of the warranties contained in clause 7.1 or in any Contract then at the sole option of the University and without prejudice to any other remedy or right:
(a) The University may reject the Products in whole or in part and return the Products to you at your risk and expense and you must immediately reimburse the University for any monies paid in respect of the returned Products; or
(b) The University may require you to replace, repair, reinstate or re-supply the Products at your expense so they conform to the Contract; or may have the Products replaced, repaired or re-supplied by another person and recover the cost of doing so from you;
(c) The University may suspend payment for the Products until the breach has been remedied.

8.2 The University may cancel any Order on 30 days written notice if you have breached the Contract and failed to remedy the breach within seven working days after written notice has been given specifying the breach and requiring it to be remedied. Breach of any warranty by you can be treated by the University as breach of the Contract whether or not the University elects to accept the Products.

8.3 Either party may cancel any Order immediately if the other party becomes bankrupt, ceases business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with creditors under the Companies Act 1993.

8.4 No failure or delay on the part of the University to exercise any of its right in respect of any default under the Contract by you will prejudice its rights in connection with that default or any subsequent default.

8.5 If the Order is cancelled you will return to the University all payments made. However, if upon cancellation the University elects to keep or take any Products it will pay for them but otherwise no compensation will be payable to you.

8.6 Cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect under the Contract.

INDEMNITY

9. You will indemnify the University against any costs, losses, damages or liability in connection with any claims by or on behalf of any person/s:
(a) arising out of negligence or other fault or breach of any responsibility owed to any person by you, your employees, agents and subcontractors in the performance of or non-compliance with the Contract; and
(b) pursuant to any statutory or other legal requirements relating in any way to the Products.

THE RELATIONSHIP BETWEEN YOU AND THE UNIVERSITY

10. Nothing in these terms of purchase should be interpreted as constituting either the University or you, an agent, partner or employee of the other and neither you nor the University may pledge the credit of the other not represented to anyone that:
(a) it is the other party;
(b) it is an agent, partner or employee of the other party; or
(c) it has any power or authority to incur any obligation of any nature on behalf of the other party.

The University’s relationship with you is not exclusive, you are free to supply goods to other purchasers and the University is free to purchase goods (including goods equivalent to yours) from other suppliers.

You acknowledge that for the purpose of each Contract the University which places an Order is to be treated as a “consumer” in terms of the Consumer Guarantees Act 1993.

CONFIDENTIALITY

11. Each party undertakes to the other that neither it nor its officers, employees, agents and/or subcontractors will divulge Confidential Information to others, without prior written consent of the other party, otherwise than as required in the ordinary course of performing its obligations under the Contract or as may be necessary for the University to promote, sell or service the Products or as required by law.

12. All Confidential Information provided by the University will be and will remain the property of the University, and you must:
(a) use the Confidential Information only for the purpose of a Contract and/or Order; and
(b) return the Confidential Information to the University upon the University’s request at anytime or if no request is made, upon completion or termination of a Contract.

HEALTH AND SAFETY

12. You warrant that you have complied and will comply with approved codes of practice under the Health and Safety at Work Act 2015 and all other regulatory provisions (including the Health and Safety at Work 2015, itself), connected with the Products.

ASSIGNMENT AND SUB-CONTRACTING

13.1 You may not assign or otherwise transfer any of the rights, benefits or obligations under the Contract, without the prior written consent of the University.
13.2 You must not sub-contract or otherwise arrange for another person to discharge any of your obligations (excluding delivery) under the Contract without the prior written consent of the University. Notwithstanding the University’s consent, you will remain fully responsible for all obligations to the University under the Contract.

LAW AND CONSTRUCTION

14.1 Headings appear as a matter of convenience only and will not affect the interpretation of the Contract.
14.2 The Contract is governed by New Zealand law. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.
14.3 The singular includes the plural and vice versa.

NOTICES

15.1 Any notice to be given under the Contract must be in writing and must be delivered or sent by registered post to the University Strategic Procurement Office or to Your registered office, or if You have no registered office, Your usual address.
15.2 The party to whom a notice is sent will be deemed to have received the notice if sent by registered post, 3 business days after it has been posted.