



# Purchase Order Terms and Conditions

## 1. Application of these Terms and Conditions to a College Purchase Order

By accepting a Purchase Order from the college, the Supplier named in that Purchase Order agrees to the following terms and conditions as applying to the provision of the goods or services under that Purchase Order. These terms and conditions prevail over any terms and conditions of the Supplier.

Any amendments or changes made by the Supplier to the Purchase Order will not be binding on the College unless expressly agreed in writing and signed by the College.

When the Supplier:

- (a) Acknowledges the Purchase Order, or
  - (b) Delivers the goods or services ordered in the Purchase Order, or
  - (c) Commences the work ordered under the Purchase Order,
- (whichever occurs earliest) the Supplier is deemed to have accepted the Purchase Order and these Purchase Order Terms and Conditions, and the date of such acceptance is the Commencement Date of this Agreement.

Where the Supplier has entered into an ongoing Master Supply Agreement with the College, and that Master Supply Agreement is quoted on the Purchase Order, the Master Supply Agreement will apply to that Purchase Order, and these Purchasing Order Terms and Conditions will not apply to that Purchase Order.

## 2. General Definitions

Term	Definition
Agreement	means the Purchase order and these Purchase Order Terms and Conditions.
Business Day	means a day from Monday to Friday 9 am to 5 pm other than public holidays in Hong Kong.
Confidential Information	means all data, documentation or information (" <b>Information</b> ") disclosed by the College to the Supplier relating to the goods or services in the Purchase Order that is by its nature confidential, or that the College has designated as confidential, but does not include: (a) Information in the public domain other than by breach of these terms and conditions; or (b) Information already known to the Supplier at the time of disclosure.
Goods or Services	means any commodity provided to the College by the Supplier (including but not limited to goods, equipment, materials, articles, information systems, software, services, design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing, delivery, installation, fixing), as named in the Purchase Order.
Intellectual Property	Intellectual Property or IP means all intellectual property rights, including: (a) patents, plant breeder's right, copyright, rights in circuit layouts, registered designs, trademarks, and any right to have Confidential Information kept confidential; and (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

	but for the avoidance of doubt excludes Moral Rights and similar non-assignable personal rights of any person.
Master Supply Agreement	means an agreement between the Supplier and the College for the ongoing supply of goods or services.
Moral Rights	means in relation to an author: (a) a right of attribution of authorship; or (b) a right not to have authorship falsely attributed; or (c) a right of integrity of authorship.
Purchase Order	means a purchase order issued by the College to the Supplier. A Purchase Order may be issued electronically to integrated Suppliers, or faxed as required.
Party	means either the College or the Supplier, as the context permits, and "Parties" shall mean both of them.
Specification	means any additional specifications or standards referenced or attached to the Purchase Order.
Supplier	means the person or entity providing the goods or services as named in the Purchase Order.
College	means the UOW College Hong Kong
Warranty period	means the period commencing on the date of the supply of the complete goods or services and lasting for a period of one (1) year unless otherwise specified.

### 3. Interpretation

- 3.1. Words in singular are deemed to include the plural and vice versa.
- 3.2. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text.
- 3.3. Words denoting a natural person shall include a corporation and vice versa.

### 4. Supplier Due Diligence

- 4.1. The Supplier represents and warrants that it has carefully examined all documents furnished by the College and fully understands all the conditions, risks, contingencies and other circumstances which might affect the supply of the goods or services.
- 4.2. No increase in the Purchase Order price will be allowed as a result of the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.
- 4.3. If at any time the Supplier considers that there is any ambiguity in the Purchase Order it must immediately notify the College. If the College considers that there is no such ambiguity it must notify the Supplier accordingly, giving its interpretation of the item claimed by the Supplier to be ambiguous. If the College agrees that there is ambiguity the Parties must use reasonable efforts to resolve the matter promptly.

### 5. Quality

- 5.1. The Supplier warrants that to the extent permissible by law, all goods or services:
  - (a) are suitable for the purpose for which they are required;
  - (b) are of merchantable quality;
  - (c) comply with the requirements of this Agreement
- 5.2. The Supplier warrants that work carried out by the Supplier in the provision of Services are of the highest quality and standard.

- 5.3. Where specified in the Purchase Order or Specification, the goods or services must adhere to the relevant quality standard.
- 5.4. Any services performed by the Supplier must be carried out in accordance with best industry practice and comply with all applicable Hong Kong Standards and / or other referenced codes, the requirements of relevant statutory authorities and applicable laws.
- 5.5. The College may from time to time (after consultation with the Supplier) specify key performance indicators and reporting in order to measure service performance.

## **6. Representations and Warranties**

- 6.1. The Supplier represents and warrants to the College that:
  - (a) it has the necessary skills, resources and experience to successfully supply the goods or services in accordance with the requirements of the Purchase Order and the Agreement;
  - (b) it has the power and capacity to enter and perform its obligations under this Agreement;
  - (c) it has personnel who have sufficient skill, expertise, capacity and resources to perform the services;
  - (d) it will take all the necessary steps to ensure that representations and warranties given by the Supplier under this Agreement is not breached;
- 6.2. The Supplier must correct any defect or failure in the goods or services without delay and at no cost to the College by way of repair, replacement, modification or other means acceptable to the College.

## **7. Delivery and Installation**

- 7.1. Prices quoted in the Purchase Order are Free Into Store (FIS) to the nominated delivery site on the Purchase Order, unless otherwise specified.
- 7.2. Goods shall be:
  - (a) adequately packaged and protected to ensure safe delivery to the delivery point by the required delivery date specified in the Purchase Order;
  - (b) delivered in reusable packaging where possible and such packaging including pallets and crates, remains the property of the supplier. These items shall be taken back by the supplier or their courier company unless otherwise agreed;
  - (c) delivered to the nominated College address on the Purchase Order,
  - (d) when delivered, be accompanied by a delivery document which must be signed by a duly authorised representative of the College at the point of delivery.
- 7.3. Where no delivery date is specified on the Purchase Order, the Supplier shall undertake to deliver the goods or services at the earliest possible opportunity on a Business Day.
- 7.4. If the Supplier fails to deliver the goods or services by the specified delivery date(s), the College shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of this agreement.
- 7.5. All shipments, delivery documents, invoices and correspondence to the College in relation to the Purchase Order must be identified with the unique College Purchase Order number.

- 7.6. Oversupply of the goods or services will not be accepted unless authorised by the College prior to delivery.
- 7.7. No substitute goods or services will be accepted without prior written authority from the College.

## **8. Fees and Payment**

- 8.1. The Supplier will invoice the College in accordance with prices quoted on the Purchase Order.
- 8.2. Each invoice submitted by the Supplier must:
  - describe the goods or service supplied;
  - reference the Purchase Order number; and
  - be a valid invoice.
- 8.3. If approved by the College, the College will pay the valid invoice within 30 days from date of receipt of the invoice by the College.
- 8.4. The Supplier shall be responsible for the payment of all relevant duties and charges payable with respect to the supply of the goods or services. The Purchase Order price shall be deemed to be inclusive of all such duties and charges.
- 8.5. Electronic invoices will be paid without the requirement for hard copy invoices.
- 8.6. The Supplier agrees to repay the College any payments credited to the Supplier in error, and the College reserves the right to set off the amount of any overpayments made in error against any future debt or liability owing by the College to the Supplier.

## **9. Confidentiality**

- 9.1. The Supplier agrees that all Information in the Purchase Order is Confidential Information, and the Supplier must only use that Information to provide the goods or services to the College.
- 9.2. The Supplier must not disclose any Confidential Information to any third party without the prior written consent of the College.
- 9.3. The Supplier may only disclose the Confidential Information to its employees or advisers who have a need to know in order for the Supplier to provide the goods or services.
- 9.4. The Supplier must keep the Confidential Information secure so as to ensure that unauthorised persons do not have access to the Confidential Information.

## **10. Intellectual Property**

- 10.1. Neither Party assigns any of its existing Intellectual property rights to the other Party by the Supply or receipt of any goods or services under the Agreement.
- 10.2. The Supplier agrees that all Intellectual Property created in the course of supplying the goods or services to the College shall vest in and remain the property of the College.
- 10.3. Any goods made or work completed according to College designs, or developed for the College, or any designs supplied (or copies thereof); shall be held by the Supplier on behalf of the College and at the disposal of the College.

## **11. Subcontracting and Assignment**

- 11.1. The Supplier must not subcontract or assign all or any part of the Agreement without the prior written consent of the College. In seeking the College's consent, the Supplier must provide full particulars of the goods or services to be subcontracted together with details of the proposed subcontractor.
- 11.2. The College's consent to allow subcontracting in no way relieves the Supplier of any of its obligations under this Agreement.

## **12. Insurance and Indemnity**

- 12.1. The Supplier shall maintain at its expense adequate insurances having due and proper regard to the nature of its business and its obligations pursuant to the Agreement. Upon request by the College, the Supplier provides evidence of such insurances to the College.
- 12.2. The Supplier must ensure that every permitted subcontractor engaged by the Supplier is insured to the same extent as the obligations of the Supplier set out above.
- 12.3. The Supplier must indemnify and keep indemnified the College and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act or omission of the Supplier, its employees, agents or subcontractors related to provision of the Services under the Agreement.

## **13. Suspension and Termination**

### **Suspension**

- 13.1. The College may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. The Supplier must cease work according to the notice of suspension upon the date of receipt of that notice.
- 13.2. Where the College has notified the Supplier that the suspension of the agreement, the Supplier must resume the work under the Purchase Order within a reasonable time of being directed to do so by the College.

### **Default and Termination**

- 13.3. In the event of a breach by the Supplier of any of the material terms and conditions of the Agreement, and that breach is not remedied within seven (7) days of the College notifying the Supplier of that breach, the College may immediately terminate the Agreement in whole or part by notice to the Supplier.

### **No Fault Termination**

- 13.4. The College may terminate the Purchase Order at any time by written notice to the Supplier.

### **Effect of Termination**

- 13.5. In the event of termination of the Agreement, the Supplier shall:
  - (a) Where the College has not yet paid the Supplier, only be entitled to payment by the College for any reasonable costs actually incurred by the Supplier directly from the Purchase Order up to the date of termination, provided adequate proof of costs being supplied to the College.
  - (b) Where the College has paid the Supplier, within fourteen (14) days of termination, reimburse the College for the goods or services not yet delivered or supplied to the College.

## 14. Disputes

- 14.1. If a dispute arises out of, or relates to this Agreement, a Party may not commence any court proceedings relating to the dispute unless he has complied with this clause except where the Party seeks urgent interlocutory relief.
- 14.2. A Party claiming that a dispute ("Dispute") has arisen under or in relation to this Agreement must give written notice to the other Party specifying the nature of the Dispute.
- 14.3. On receipt of that notice by the other Party, the Parties must endeavour to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation or determination or similar techniques agreed by them.
- 14.4. If the Parties do not agree within seven (7) days of receipt of the notice referred to above (or such further period as agreed in writing by them) as to:
  - (a) The dispute resolution technique and procedures to be adopted;
  - (b) The timetable for all steps in those procedures; and
  - (c) The selection and compensation of the independent person required for such technique,then the Parties must mediate the Dispute in accordance with the Mediation Rules of Hong Kong.
- 14.5. Notwithstanding any Dispute between the Parties, the Supplier's obligations to supply under the Agreement continue in full force and effect.

## 15. Variations

- 15.1. The Supplier must not vary the Purchase Order except as directed and approved by the College in writing.
- 15.2. The College may request variations to the Purchase Order from time to time and the Supplier must use reasonable endeavours to accommodate any such requests. Any request by the College to vary the Purchase Order shall only be accepted by the Supplier as valid if confirmed in writing by the College.
- 15.3. If a variation is agreed between the Parties, the Supplier must confirm and notify the College of:
  - (a) additional or reduced costs resulting from any agreed variation, and
  - (b) any revised delivery or completion schedules as a result of the agreed variation.
- 15.4. The Purchase Order shall be amended by the College to reflect the agreed variation, including costs and changes to delivery schedules.

## 16. Entire Agreement

The Purchase Order and the Purchasing Order Terms and Conditions constitute the entire agreement between the Parties with respect to its subject matter and supersede all prior agreements and understandings between the Parties in connection with it.

## 17. Communication

- 17.1. Any notice to be given by one Party to the other under this Agreement must be in writing and sent to the other Party at the address set out in the Purchase Order.
- 17.2. Any verbal instructions or directions from the College shall be confirmed in writing to the Supplier within a reasonable time.