

Melbourne Polytechnic Purchase Order Terms (Goods and/or Services)

1. **Application**
 - 1.1 These Purchase Order Terms (**Terms**) apply where Melbourne Polytechnic issues a Purchase Order to a person or entity supplying Goods and/or Services to Melbourne Polytechnic as described in a Purchase Order (**Supplier**).
 - 1.2 Where other specific contractual arrangements have been executed by Melbourne Polytechnic and the Supplier, these Terms apply only to the extent not inconsistent with those contractual arrangements.
 - 1.3 Subject to clause 1.2, if there is any inconsistency between these Terms and a Purchase Order, the Purchase Order will prevail to the extent of that inconsistency.
 - 1.4 Any terms in any quote, offer, or acceptance document or any other document supplied by the Supplier are of no legal effect, even if signed by a representative of Melbourne Polytechnic.
2. **Supply of Goods and/or Services**
 - 2.1 The Supplier must supply the Goods and/or Services to Melbourne Polytechnic in accordance with these Terms, all Laws and any directions from Melbourne Polytechnic; and at the Price or Item Price described in the Purchase Order.
 - 2.2 Except as expressly stated in the Purchase Order, any Price or Item Price includes all taxes, duties, insurance, loading, unloading, storage, labour costs, all amounts payable for Intellectual Property Rights, and all other costs of the Supplier (except GST).
 - 2.3 The Supplier agrees that it will meet or exceed the minimum expectations set out in the Supplier Code of Conduct.
3. **Delivery of Goods and/or Services**
 - 3.1 The Supplier must deliver the Goods and/or Services to the Delivery Point at the Time for Delivery.
 - 3.2 Delivery of an Item has not occurred until confirmed in writing by Melbourne Polytechnic, but confirmation is not evidence that Goods and/or Services have been accepted.
 - 3.3 The Supplier must package the Goods to ensure that they are protected from corrosion, deterioration and physical damage during handling, transportation and storage.
4. **Acceptance of Goods and Non-Conforming Services**
 - 4.1 Melbourne Polytechnic will be taken to have accepted an Item if it does not notify the Supplier of its acceptance within 21 days of confirmation of delivery under clause 3.2.
 - 4.2 If Melbourne Polytechnic is not satisfied that an Item conforms with these Terms, the Supplier must at the Supplier's cost collect and rectify or replace the Item within 14 days or if this is not possible, reimburse Melbourne Polytechnic for all costs incurred in doing so.
 - 4.3 Risk in an Item passes to Melbourne Polytechnic when an Item is accepted in accordance with this clause 4.
 - 4.4 Title in an Item passes to Melbourne Polytechnic on the earlier of acceptance of the Item in accordance with this clause 4 and payment of the Item Price for the Item.
 - 4.5 If the Supplier fails to perform the Services in accordance with these Terms (**Non-Conforming Services**), the Supplier must correct the Non-Conforming Services at its cost within the period directed by Melbourne Polytechnic.
 - 4.6 If Non-Conforming Services are not able to be corrected under clause 4.5, Melbourne Polytechnic may arrange for the Non-Conforming Services to be corrected and the Supplier must reimburse all costs incurred by Melbourne Polytechnic.
 - 4.7 Melbourne Polytechnic is not required to pay for any Non-Conforming Services unless and until those Services are corrected by the Supplier.
5. **Warranties and Intellectual Property Rights**
 - 5.1 The Supplier represents and warrants to Melbourne Polytechnic that the Supplier has the right to sell and transfer full and unencumbered title and property in the Goods to Melbourne Polytechnic and each Item is new; fit for the purpose for which the Item was acquired; conforms to the description, model number and the sample (if any) provided by the Supplier; conforms with these Terms, is free from defects in materials, manufacture, workmanship and design; is of merchantable quality; and complies with all applicable Laws.
 - 5.2 The Supplier must obtain for Melbourne Polytechnic the benefit of any manufacturer's warranty applicable to an Item.
 - 5.3 The Services must be fit for their intended purpose and must be performed with due skill, care and consistent with the highest professional and industry standards.
 - 5.4 Melbourne Polytechnic owns all materials brought into existence as part of performing the Services (**IP**) with effect from the date of creation and the Supplier irrevocably assigns to Melbourne Polytechnic all of its Intellectual Property Rights (including future rights) in the IP on creation.
 - 5.5 The Supplier grants Melbourne Polytechnic a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sub-license) to use, copy, publish, modify, adapt, distribute, and create derivative works from the materials used by the Supplier to perform the Services that arose independently of these Terms (**Background IP**) to the extent necessary to fully exercise its rights in the IP.
 - 5.6 The Supplier warrants that it has or will procure written assignments of all Intellectual Property Rights that its Personnel hold in the IP and irrevocable written consents to all acts or omissions by Melbourne Polytechnic that might have otherwise affected the 'Moral Rights' of the authors of the 'Works' (as defined in the *Copyright Act 1968* (Cth)).
6. **Payment**
 - 6.1 Subject to the Supplier's compliance with these Terms, Melbourne Polytechnic will pay to the Supplier the Price or Item Price in accordance with the Purchase Order.
 - 6.2 Any payment is payment on account only and not proof of delivery of Goods or completion of Services.
 - 6.3 Melbourne Polytechnic may set off any amount owed to the Supplier by Melbourne Polytechnic against any amount payable or claimed to be payable by the Supplier to Melbourne Polytechnic whether under these Terms or otherwise.
 - 6.4 The Supplier may invoice Melbourne Polytechnic on delivery of the Goods or completion of the Services.
7. **Access, safety and equipment**
 - 7.1 When performing its obligations under these Terms, the Supplier must, and must ensure that its Personnel comply with all occupational health and safety Laws; protect and maintain the security of Melbourne Polytechnic's premises and facilities; and comply with all Melbourne Polytechnic policies and procedures. The Supplier must provide all appropriate equipment to perform the Services and such equipment must be maintained.
 - 7.2
8. **Confidentiality and Privacy**
 - 8.1 The Supplier must only use the Confidential Information in connection with the performance of its obligations under these Terms and must not disclose, or permit the disclosure of, any Confidential Information except with Melbourne Polytechnic's prior written consent or if required by Law.
 - 8.2 The Supplier must return or destroy (at Melbourne Polytechnic's direction) all Confidential Information which is in its or its Personnel's possession or control.
 - 8.3 The Supplier agrees to be bound by the Principles with respect to any act done by the Supplier to the same extent that Melbourne Polytechnic would have been bound in respect of that act if it had been directly done by Melbourne Polytechnic.
 - 8.4 The Supplier must not do anything with any Protected Information that will cause the Supplier or Melbourne Polytechnic to breach any Privacy Law and must notify Melbourne Polytechnic within 4 days of becoming aware of any actual or suspected breach, and cooperate to resolve any complaint made under any Privacy Law.
 - 8.5 The Supplier must ensure that its Personnel do not do or omit to do anything which, if done by the Supplier, would be a breach of this clause 8.
9. **Liability**
 - 9.1 To the fullest extent permitted by Law, the Supplier indemnifies and agrees to keep Melbourne Polytechnic and its Personnel (together, the '**Indemnified**') indemnified from and against all losses incurred by the Indemnified (including in connection with

a third party claim) arising directly or indirectly out of or otherwise in connection with these Terms and:

- 9.1.1 the death of, or disease or injury to, any person caused or contributed to by the Supplier or its Personnel;
- 9.1.2 any loss of, or damage to, any property caused or contributed to by the Supplier or its Personnel;
- 9.1.3 any breach of these Terms or any Law by the Supplier or its Personnel;
- 9.1.4 any liability to make payments to any of the Supplier's Personnel;
- 9.1.5 any Claim by any person against the Indemnified alleging their use of the Goods and/or Services, IP or Background IP infringes any person's Intellectual Property Rights; and
- 9.1.6 any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Supplier or its Personnel,

except to the extent that the loss was caused by any negligent act or omission or wilful misconduct of the Indemnified.

- 9.2 In no circumstances will either party be liable to the other party for any consequential, indirect or special losses or damages of any kind (including loss of profit, loss of revenue, loss or corruption of data, business interruption or indirect costs) despite anything to the contrary in these Terms.
- 9.3 The Supplier must maintain (and provide evidence on request) public and products liability insurance of at least \$20,000,000 per occurrence, workers' compensation insurance, and motor vehicle insurance of at least \$10,000,000 per occurrence.

10. Term and Termination

- 10.1 Subject to clause 1.2, these Terms commence when Melbourne Polytechnic issues a Purchase Order and end when the parties have fulfilled all of their obligations, unless terminated earlier in accordance with this clause 10.
- 10.2 Either party may immediately terminate these Terms by written notice if the other party becomes insolvent or bankrupt or the other party breaches these Terms and does not remedy the breach within 14 days of receiving written notice of the breach.
- 10.3 Melbourne Polytechnic may in its absolute discretion immediately terminate these Terms for convenience, without cause, by giving the Supplier 14 days' notice.
- 10.4 Melbourne Polytechnic may immediately terminate these Terms by notice in writing to the Supplier if the Supplier fails to supply the Goods and/or Services by the Time for Delivery.
- 10.5 If these Terms are terminated, Melbourne Polytechnic must pay the Supplier all amounts due under these Terms for Goods and/or Services delivered before the effective termination date but is not liable for any other costs in connection with termination (including any loss or consequential, indirect or special losses or damages of any kind and including loss of profits, incurred by the Supplier).
- 10.6 If these Terms are terminated, the Supplier must repay to Melbourne Polytechnic all sums paid for any undelivered Goods and/or Services.
- 10.7 Termination or expiry of these Terms will not affect any provisions which, by their terms or nature, survive termination or expiry or any rights and remedies already accrued by either party under, or in respect of any breach of, these Terms.

11. GST

Unless expressly stated otherwise, all consideration payable under these Terms in relation to any supply includes GST. If the Purchase Order expressly excludes GST and GST is payable in respect of that supply, the recipient must pay to the supplier an amount equal to the GST payable on the supply, subject to receiving a valid tax invoice.

12. Modern Slavery and Child Safe Standards

- 12.1 The Supplier must comply (and ensure its Personnel comply) with the Modern Slavery Laws and the Child Safe Standards.
- 12.2 The Supplier confirms it conducts its business in a manner consistent with the principles of the Modern Slavery Laws and the Child Safe Standards and is not subject to any investigation, enforcement or conviction involving Modern Slavery or child safety.
- 12.3 The Supplier must promptly notify Melbourne Polytechnic of any actual or suspected breaches by the Supplier, or its subcontractors, of the Modern Slavery Laws or Child Safe

Standards, and agrees to provide Melbourne Polytechnic immediately upon request any information and assistance that Melbourne Polytechnic may require for compliance with the Modern Slavery Laws or Child Safe Standards.

13. General

- 13.1 These Terms may only be varied or replaced by a document executed by the parties.
- 13.2 Subject to clause 1.2, these Terms supersede any other agreement between Melbourne Polytechnic and the Supplier.
- 13.3 The Supplier must maintain records of all Goods and/or Services supplied under these Terms in accordance with the *Public Records Act 1973* (Vic) for seven years after expiry or termination of these Terms.
- 13.4 For the duration of these Terms and for 12 months after termination or expiry, the Supplier must on request allow Melbourne Polytechnic and its representatives to access the Supplier's premises to take copies of the Supplier's records and other documents for the purpose of verifying the Supplier's compliance with these Terms.
- 13.5 The Supplier must not assign, novate or otherwise transfer any of its rights or obligations under these Terms, or subcontract the performance of any of its obligations under these Terms without the prior written consent of Melbourne Polytechnic. The Supplier will remain liable for the performance of these Terms and for the acts, omissions, defaults and negligence of any subcontractor.
- 13.6 No party to these Terms has the power to obligate or bind any other party. No joint venture, partnership, or employment, agency, or representative relationship is created by these Terms.
- 13.7 Any failure to exercise a right under these Terms is not a waiver of that right and any consent to a breach of these Terms is not a consent to any subsequent breach.
- 13.8 All notices to Melbourne Polytechnic must be in writing and sent to the contact person specified in the Purchase Order. All notices to the Supplier must be in writing and sent to the address specified in the Purchase Order. Either party may by written notice change its address for receiving notices.
- 13.9 The rights and remedies conferred on a party by these Terms are in addition to all other rights and remedies of that party.

14. Definitions

In these Terms unless otherwise indicated:

- Child Safe Standards** means the Child Safe Standards made under the *Child Wellbeing and Safety Act 2005* (Vic) (as amended, updated or replaced from time to time).
- Confidential Information** means all information about Melbourne Polytechnic or its operations, Personnel, Intellectual Property Rights, or information that is designated by Melbourne Polytechnic as confidential (including these Terms) or is by its nature confidential.
- Delivery Point** means the location specified in a Purchase Order or by Melbourne Polytechnic in writing from time to time.
- Goods and/or Services** means the Goods and/or Services described in the Purchase Order.
- Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.
- Item** means each of the individual Goods listed in the Purchase Order.
- Item Price** means for each Item, the price listed for that Item in the Purchase Order.
- Laws** includes the common law and equity, regulations codes and guidelines.
- Modern Slavery** has the meaning given to that term in the Modern Slavery Laws.
- Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth) and any analogous laws in any other relevant jurisdictions.
- Personnel** includes all employees, officers, agents, consultants, contractors, subcontractors and other personnel.
- Price** for a Service, means the price listed for that Service in the Purchase Order.
- Principles** mean the Health Privacy Principles in the Health Records Act 2001 (Vic) and the Information Privacy Principles in the Privacy and Data Protection Act 2014 (Vic).

Privacy Law means the Health Records Act 2001 (Vic), the Privacy Act 1988 (Cth), the Privacy and Data Protection Act 2014 (Vic), and any other privacy law applicable to Melbourne Polytechnic or the Supplier.

Protected Information means any Health Information, Personal Information or Public Sector Data as defined under the Privacy Laws.

Purchase Order means a purchase order issued by Melbourne Polytechnic.

Supplier Code of Conduct means the Supplier Code of Conduct issued by the State of Victoria for suppliers supplying goods or services to the State of Victoria (as amended, updated or replaced from time to time).

Time for Delivery means the time specified in a Purchase Order or by Melbourne Polytechnic in writing from time to time.

15. Interpretation

15.1 These Terms are governed by and are to be construed under the laws of Victoria.

15.2 These Terms must not be construed to the disadvantage of the party who drafted them.

15.3 If a provision is unlawful and unenforceable, it will be severed from these Terms and the rest of these Terms remain in force.