

Purchase Order Terms and Conditions for La Trobe University Infrastructure and Operations Works

Standard Terms and Conditions

PART A: APPLICATION OF CONDITIONS

1. Interpretation

- 1.1 Unless the context requires otherwise, terms defined in Part B of this document have the same meaning in this Part A.
- 1.2 Clauses 6.2 and 6.3 of the Conditions apply to this Part A.

2. Application of the Condition

- 2.1 By registering to become a contractor to LTU on LTU's procurement website at <http://www.latrobe.edu.au/finance/vendor/>, You agree to perform works ordered by LTU from time to time, on the Conditions.
- 2.2 The Conditions do not apply to the provision of any works in respect of which You and LTU have executed a separate written agreement, whether that agreement is entered into before or after You registered as a contractor to LTU.

3. Engaging You to perform the Works

- 3.1 To engage You to perform works on the Conditions, LTU will issue You with a PO.
- 3.2 Subject to clause 2.2, a contract to perform Works is formed between LTU and You when LTU issues a PO in respect of those Works from You, on the terms and conditions set out in the Conditions.
- 3.3 LTU is not obliged to issue You with any PO and does not represent that it will engage You to perform any quantity of Work.

4. Amendment of the Conditions

- 4.1 LTU reserves the right to amend the Conditions from time to time. LTU will make amendments to the Conditions available on its procurement website.
- 4.2 LTU may terminate this agreement by written notice to the contact person specified by You upon registration on LTU's procurement website (as updated by written notice to LTU from time to time).
- 4.3 Any amendment of the Conditions or termination of this agreement under this clause 4 does not vary the terms of, or terminate, any PO Contracts formed prior to the amendment or termination.

5. General

Clauses 28 to 32 (inclusive) of the Conditions apply to this Part A as if references to a PO Contract are references to this Part A.

PART B: CONDITIONS

6. Interpretation

- 6.1 In these Conditions, unless the context otherwise requires:

Background IP means any Intellectual Property in material created independently of the PO Contract;

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia;

Conditions means the terms and conditions set out in this Part B;

Confidential Information means all information:

- (a) of a confidential nature or treated by LTU as confidential; and
- (b) disclosed by LTU to You or of which You become aware, whether before or after the date of a PO Contract,
except information You create independently of LTU or that is public knowledge (otherwise than as a result of a breach of confidentiality by You or any of Your permitted disclosees);

Contract Material has the meaning given to it in clause 14.1;

Harmful Code means any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software;

Intellectual Property means all intellectual property rights including copyright, patents, trademarks, designs, trade secrets, know-how, any application for any of the foregoing and any rights of a similar nature to any of the foregoing, whether or not capable of registration;

LTU means La Trobe University ABN 64 804 735113;

PO Contract means a contract formed under clause 7 of these Conditions;

Price means the price for the Works set out in the PO;

Purchase Order or **PO** means the documents provided by LTU to You detailing the scope of the Work (including a notice of acceptance of bid or an official purchase order or letter) and includes any documents attached to, or incorporated by reference into, those documents (including any drawings and descriptions of, or specifications or statements of requirements for, the Works);

RCTI Agreement means an agreement entered into between You and LTU or related entity of LTU pursuant to which the parties have agreed that LTU will issue recipient created tax invoices in respect of all Works performed by You;

Vendor Terms means any documents provided by You to LTU setting out terms for the performance of Works (including a quotation) prior to LTU issuing a PO to You in respect of those Works, and includes any documents attached to, or incorporated by reference into, those documents, but only to the extent that those documents grant rights or benefits to LTU (including the benefit of representations or undertakings made by You) or impose obligations on You;

Works means the project deliverable as detailed in the quotation; and

You means the person that has registered to become a contractor to LTU using LTU's procurement website or that person's successors and permitted assignees.

- 6.2 Unless the context otherwise requires: words importing the singular include the plural and vice versa; references to a person includes a body corporate, a natural person and any other entity, headings are for guidance only, and the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.
- 6.3 A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Conditions or any part of them.

7. Terms on which Works are to be performed

- 7.1 Upon LTU submitting a PO to You for the performance of any Works to which these Conditions apply in accordance with Part A of this document, a PO Contract is formed on the terms described in this clause 7.
- 7.2 Each PO Contract is on the terms set out in the relevant PO, any Vendor Terms and these Conditions.
- 7.3 If there is any inconsistency between the terms of these Conditions and the terms of a PO, the PO will prevail to the extent that it specifically amends these Conditions and otherwise these Conditions prevail to the extent of the inconsistency.
- 7.4 If there is any inconsistency between the terms of the Vendor Terms and the terms of these Conditions or of the relevant PO (including the description of the Works or the Price), the Conditions or the PO (as applicable) prevails to the extent of the inconsistency.

8. Performance and Completion

- 8.1 Upon receipt of a PO You must:
- (a) perform the Works strictly in accordance with the requirements of the PO;
 - (b) where possible, perform the Works outside scheduled class activities; and
 - (c) carry out any Works likely to cause noise, vibration or other disturbance in accordance with the LTU's directions.
- 8.2 You must promptly commence the Works and complete the Works to the LTU Representative's reasonable satisfaction by the completion date specified in the PO, or such later date as extended by the LTU Representative.
- 8.3 If no completion date is specified, in the PO, LTU may require You to undertake the Works or any part of the Works in conformity with a reasonable time schedule issued by LTU
- 8.4 If You fail to complete the Works by the completion date referred to in Clause 8.2 You shall be liable to pay to LTU by way of liquidated and pre-ascertained damages a sum calculated in accordance with the rate stated in the PO for every day of delay until the earlier of the date that the Works are complete, or the PO Contract is terminated by LTU.
- 8.5 You must comply with a written instruction given by LTU to vary the Works at any time prior to completion of the Works. The cost of any such variation will be an amount as approved by LTU.

8.6 You are engaged to perform the Works on a non-exclusive basis. LTU may engage others to perform the same or similar works from any other person without restriction.

9. Quality and compliance

9.1 You must:

- (a) perform the Works in accordance with all applicable laws, any requirements of relevant authorities, and any LTU policies notified by LTU from time to time (including under a separate PO Contract);
- (b) perform the Works to a high standard with all due skill, care and diligence reasonably expected of a properly qualified and experienced contractor;
- (c) ensure the Works comply with any standards or requirements set out in the PO Contract;
- (d) ensure all goods and materials forming part of the Works are new, free from any security, charge or encumbrance, free from defects in materials and workmanship, and are of acceptable quality;
- (e) comply with the requirements and obligations set out in LTU's Standard Preliminaries document;
- (h) ensure that the completed Works are fit for the purpose for which works of the same kind are commonly supplied and for any other purpose LTU expressly or impliedly discloses to You.

9.2 You must use all reasonable efforts to inform Yourself of LTU's requirements for the Works, and for that purpose must consult with LTU and its staff and third parties nominated by LTU prior to and throughout the performance of the Works. You must, as soon as practicable, consult with LTU in relation to any matter which arises that may materially affect Your ability to comply with your obligations under a PO Contract.

9.3 You represent and warrant that You will not, nor will You suffer or permit any third party under your direction or control to, introduce into LTU's systems any Harmful Code. If any Harmful Code is introduced, You must promptly notify LTU, take all necessary action to eliminate the Harmful Code and, at your own cost, repair any harm or destruction caused by that Harmful Code.

10. Occupational Health and Safety

10.1 You must ensure that the Works are carried out in accordance with the requirements of the OH&S Regulation and the *Occupational Health and Safety Act 2004 (Vic)* (the "*OH&S Act*") and all regulations, advisory standards and codes of practice made under the OH&S Act and that the works and You comply at all times with the Occupational Health and Safety provisions contained in LTU's Standard Preliminaries document. If You fail to do so, LTU may have those obligations performed by LTU or by others at Your cost.

10.2 You comply at all times with the Occupational Health and Safety provisions contained in LTU's Standard Preliminaries document and LTU's online Contractor Management system.

11. Completion

11.1 Upon receipt of a notice from You advising that the Works are complete, LTU may inspect and test the Works. If the Works conform with the requirements of the PO Contract, LTU will promptly confirm that the Works are complete by giving notice to You. LTU may reject any Works that do not conform with the requirements of the PO Contract. If LTU does not confirm that the Works are complete within 30 days after receipt of Your notice under clause 11.1, those Works will be deemed to have been completed.

11.2 Acceptance of Works by LTU in no way constitutes a waiver or limitation or any rights or remedies that are conferred by law or are otherwise provided under the PO Contract.

11.3 Without limiting any other rights or remedies available to LTU, if LTU rejects any part of the Works or notifies You of any defects in the Works during the defects liability period specified in the PO (being 12 months from the completion date if no defects liability period is specified in the PO), You must comply with a requirement of LTU to, within 7 days after LTU's notice (or such other timeframe as is reasonable) repair or replace the relevant Works so that they comply with the PO Contract, to the satisfaction of LTU. If You fail to comply with your obligations under this clause 11.3, LTU may perform or have performed the necessary work and recover the cost from You without prejudice to any other rights or remedies LTU may have.

11.4 LTU may monitor the performance of the Works and You must provide LTU with information and assistance reasonably LTU may by notice require You to take all necessary steps to ensure that the Works comply with the PO Contract at no additional cost to LTU.

11.5 If You fail to take any required steps within 14 days after notification by LTU under clause 11.4, LTU may perform or have performed the necessary work and recover the cost from You without prejudice to any other rights or remedies LTU may have.

12. Passing of Risk and Title

12.1 Risk of loss of or damage to, the Works passes to LTU on acceptance of the Works.

13. Inclusive price

13.1 Unless otherwise specified in the PO, the Price includes:

- (a) subject to clause 13.2, all taxes, duties and other imposts in connection with the performance of a PO Contract;
- (b) all amounts payable for the use of any Intellectual Property; and
- (c) all costs, fees and charges for the performance of the Works, including all ancillary work and services relating to the Works.

13.2 Despite any other provision in a PO Contract, if a party (Supplier) makes a supply under or in connection with the PO Contract on which GST is imposed (not being a supply the consideration for which is specifically described in the PO Contract as GST inclusive), the consideration payable or to be provided for that supply under the PO Contract but for the application of this clause (GST exclusive consideration) is increased by an amount equal to the GST payable by the Supplier on that supply. The amount by which the GST exclusive consideration is increased must be paid to the Supplier by the recipient of the supply without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

13.3 If a payment to You or LTU under a PO Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

13.4 Words or expressions used in this clause 13 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 13.

14. Intellectual Property

14.1 Upon its creation all Intellectual Property, other than Background IP, in material created for the purpose of, or as a result of, performing Your obligations under the PO Contract (Contract Material) vests in LTU and You assign to LTU all such Intellectual Property (including by way of assignment of future Intellectual Property) with effect from the date of creation. You must not use, disclose, copy or reproduce such Intellectual Property except for the purposes of the PO Contract.

14.2 To the extent that LTU needs to use any material in which Background IP subsists to exercise its rights to the Contract Material or otherwise receive the full benefit of the Works, You grant to LTU a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that material.

14.3 You warrant that You have the necessary rights to assign the Intellectual Property and grant the licences as provided in this clause 14.

14.4 You warrant that LTU's use of the Works or the Contract Material will not infringe the Intellectual Property of any person.

14.5 If LTU's use of the Works or the Contract Material infringes a third party's Intellectual Property, You must, in addition indemnifying LTU under clause 14.6 and any other rights and remedies that LTU may have, promptly, at Your expense:

- (a) use Your best efforts to secure the rights for LTU to continue to use the affected Works or Contract Material free of any claim or liability for infringement; or
- (b) replace or modify the affected Works or Contract Material so that the Works or Contract Materials, or the use of them, does not infringe the Intellectual Property of any other person, without any degradation of the performance or quality of the Works or Contract Material.

14.6 You indemnify LTU against any costs, expenses, loss, claims or damage arising out of, or as a consequence of, the infringement or alleged infringement of any Intellectual Property by reason of the purchase, possession or use of the Works or Contract Material by LTU or any of its assignees or licensees.

15. Assignment and subcontracting

15.1 You must not assign or subcontract any of Your rights or obligations under a PO Contract without LTU's prior written consent (which may be granted, granted subject to conditions or withheld in LTU's discretion).

15.2 If You subcontract any of Your obligations under a PO Contract, You remain responsible for the performing Your obligations under the PO Contract and will be liable to LTU for the acts and omissions of any subcontractor as if they were Your acts and omissions.

16. Personnel

- 16.1 If the PO Contract specifies that particular personnel be involved in Your performance of the PO Contract, You must perform the PO Contract using those personnel. If any of the specified personnel are unable to perform, You must notify LTU immediately and replace those personnel with suitably qualified and experienced personnel to the reasonable satisfaction of LTU.
- 16.2 LTU may at any time request You to cease using any of Your personnel to perform the work carried out under a PO Contract. You must promptly arrange for the removal and replacement of such personnel.

17. Payment

- 17.1 Subject to the satisfactory performance of the PO Contract by You and receipt of a correctly rendered invoice, LTU will pay the Price 30 days from the end of the month that the invoice is dated, unless otherwise agreed to in accordance with the terms of payment (if any) specified in the PO Contract.
- 17.2 A Tax Invoice will be correctly rendered if it:
- (a) contains Your name, address for payment and ABN;
 - (b) contains pre-GST amounts, the amount of GST applied, any discount applicable and the total amount payable by LTU;
 - (c) contains the Purchase Order number or other reference number provided by LTU;
 - (d) contains an itemised list of the Works performed and, if applicable, the price of each item;
 - (e) contains itemised details of any other fees and expenses properly payable by LTU;
 - (f) complies with the requirements of the GST law;
 - (g) is accompanied by reasonable documentation substantiating the amount claimed; and
 - (h) is provided to LTU by email to electronic.invoice@latrobe.edu.au or any replacement address notified by LTU from time to time.

18. Conflict of interest

- 18.1 You warrant that You do not hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with Your duties and interests under a PO Contract.
- 18.2 You must inform LTU of any matter which may give rise to an actual or potential conflict of interest at any time during the performance of a PO Contract.

19. Termination for default

- 19.1 Without limiting any other rights or remedies LTU may have against You arising out of or in connection with a PO Contract, LTU may terminate a PO Contract effective immediately by giving notice to You if:
- (a) You breach a material provision of the relevant PO Contract where that breach is not capable of remedy;
 - (b) You breach any provision of the PO Contract and fail to remedy the breach within 14 days after receiving notice requiring You to do so; or
 - (c) an event specified in clause 19.2 of these Conditions happens to You.
- 19.2 You must notify LTU immediately if You cease to carry on business, You cease to be able to pay Your debts as they become due, enter into liquidation, have a controller or managing controller or liquidator or administrator appointed, are declared bankrupt or assign Your estate for the benefit of creditors or any analogous event occurs.

20. Termination for convenience

- 20.1 LTU may, at any time, by notice, terminate a PO Contract.
- 20.2 If a PO Contract is terminated under clause 20.1, LTU is liable only for:
- (a) payments under clause 17 for Works provided in accordance with the PO Contract before the effective date of termination; and
 - (b) reasonable costs actually incurred by You and directly attributable to the termination.
- 20.3 LTU is not liable to pay compensation under clause 20.2 for an amount which would, in addition to any other amounts paid or payable to You under the relevant PO Contract, exceed the Price.
- 20.4 You are not entitled to compensation for loss of prospective profits.
- 20.5 Termination of a PO Contract under clause 19 or 20 of these Conditions does not affect any accrued rights or remedies of a party.

21. Protection of property and information

- 21.1 You must ensure that any material and LTU property (including security-related devices and clearances) provided by LTU for the purposes of a PO Contract are protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.
- 21.2 You may use Confidential Information only for the purpose of performing Your obligations under a PO Contract and must keep confidential all Confidential Information except to the extent that You are required by law to disclose that Confidential Information or for disclosures permitted under clause 21.3.
- 21.3 You may disclose Confidential Information to persons who have a need to know for the purposes of a PO Contract (and only to the extent that each has a need to know) and who, before disclosure:
- (a) in the case of Your officers and employees, have been directed by You to keep confidential all Confidential Information; and
 - (b) in the case of other persons, have agreed in writing with You to comply with substantially the same obligations in respect of Confidential Information as those imposed on You under the PO Contract.
- 21.4 You must ensure that each person to whom You disclose Confidential Information under clause 21.3 complies with the direction or agreement (as the case may be) referred to in clause 20.3.
- 21.5 You must:
- (a) in respect of any information that You receive or have access to in the course of performing under a PO Contract, comply with the *Privacy and Data Protection Act 2014 (Vic)* and all other privacy legislation that applies to any of the activities carried out in the course of performing the PO Contract, and any direction of LTU regarding how to comply with such legislation, as if that legislation applies to You; and
 - (b) immediately notify LTU if You become aware of a breach or possible breach of any of Your obligations under clause 21.5(a).
- 21.6 You must obtain LTU's written agreement before making a public announcement in connection with a PO Contract or any transaction contemplated by it, except to the extent that the announcement is required by law or a regulatory body (including a relevant stock exchange).

22. Use of LTU premises and facilities

You must, when using LTU's premises or facilities, comply with all applicable laws and all reasonable directions, policies and requirements of LTU, including those relating to occupational health and safety and security, in effect at those premises or in regard to those facilities from time to time, as notified by LTU or as might reasonably be inferred from the circumstances.

23. Indemnity

- 23.1 You indemnify LTU, its employees and agents against all costs, expenses, loss, claims or damage that they incur arising out of:
- (a) the performance of the Works;
 - (b) any fraud, negligence, breach of law or other wrongful act or omission by You; or
 - (c) Your breach of a PO Contract,
- except to the extent that the costs, expenses, loss or damage are directly caused by a negligent or unlawful act or omission of LTU, its employees or agents.
- 23.2 Notwithstanding anything else contained in this Agreement, Your aggregate liability to LTU under or arising from this Agreement or in tort (including negligence) or under statute arising from acts or omissions by You

shall not exceed the sum of \$10 million. This limitation of liability does not apply to liability for personal injury including death or for loss or destruction of, or damage to, any tangible property.

24. Insurance

24.1 You must effect before the commencement of the Works and maintain for the duration of the Agreement and any defects liability period the following insurances with an insurer with a minimum financial strength rating of A/Stable (Standard & Poor's). You must provide a certificate of currency for those insurances to LTU before commencing the Works and from time to time upon written LTU request. The insurance policies should not have any limitation or exclusion that would affect this Agreement in addition to the insurer's standard policy conditions and exclusions:

- (a) insurance to cover loss or damage to the Works;
- (b) public and products liability insurance for \$20,000,000;
- (c) professional indemnity insurance for \$5,000,000 including run-off cover for six years after the completion of the Works;
- (d) State and /or Territory registration including third party bodily injury insurance and motor vehicle insurance covering third party property damage for a minimum of \$20,000,000 in respect of all registrable vehicles to be brought onto the University premises or otherwise used in connection with the performance of the Agreement including by You or Your employees, agents, consultants or subcontractors;
- (e) workers' compensation and employer's liability insurance covering all actual or deemed employees for Your activities and as required by law;
- (f) personal accident/sickness and disability insurance affording cover at least equivalent to that afforded by a policy of the type referred to in (e) when workers' compensation and employer's liability insurance is not required by law;
- (g) other insurances as specified (if any).

25. Representatives

25.1 Any person named in a PO Contract as a party's representative may do all things necessary to be done by a party under that PO Contract except to the extent set out in the PO Contract or notified to the other party, but is not entitled to amend or modify the terms of the PO Contract.

25.2 A party may alter its representative at any time by sending the other party a notice.

26. Disputes

If any dispute in relation to a PO Contract arises between You and LTU, either party may by notice to the other party refer the dispute to the representatives of the parties referred to in clause 25. The parties' representatives will meet to resolve the dispute within five Business Days of such a notice and will use their reasonable endeavours to negotiate in good faith a resolution of the dispute.

27. Notices

27.1 A notice, demand, consent, approval or communication under a PO Contract (Notice) must be in writing, in English and signed by a person duly authorised by the sender, and hand delivered or sent by prepaid post, facsimile or (if the recipient has agreed to receive Notices by email for the purpose of the PO Contract) email to the recipient's address for notices specified in the PO Contract, as varied by any Notice given by the recipient to the sender.

27.2 A Notice given in accordance with clause 27.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within one Business Day after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email, when transmission and acknowledgment of the email has been recorded on the sender's computer,

but if the delivery, receipt or transmission is not on a Business Day or is after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

- 28. Waiver**
Waiver of any provision of or right under a PO Contract must be in writing signed by the party entitled to the benefit of that provision or right, and is effective only to the extent set out in the written waiver.
- 29. Negation of employment, partnership and agency**
A PO Contract does not create a relationship of employment, agency or partnership between You and LTU.
- 30. Entire agreement**
A PO Contract constitutes the entire agreement between the parties in connection with the performance of the Works contemplated by that PO Contract, provided that this clause 29 does not prevent LTU from relying on any representations made by You in relation to the Works.
- 31. Governing law**
Each PO Contract is governed by laws in force in Victoria. You agree to submit to the exclusive jurisdiction of the courts of Victoria.
- 32. General**
- 32.1 No variation to a PO Contract is binding unless it is in writing and signed by LTU.
- 32.2 If any of the terms and conditions in a PO Contract are held to be invalid, unenforceable or illegal for any reason, the remaining terms and conditions shall nevertheless continue in full force.
- 32.3 You agree to comply with, and to ensure that Your employees, agents and sub-contractors comply with, the *Equal Opportunity Act 1995 (Vic)* and LTU's sexual harassment, harassment and discrimination policy and procedures available on the LTU website at <http://www.latrobe.edu.au/policy/> under Administrative Policies – Governance-Equality and Diversity.
- 33. Working with Children/Child Protection**
- 33.1 The Contractor must comply (and ensure its employees, officers, volunteers, agents and subcontractors comply) with all applicable child safety laws, regulations policies and procedures as in force from time to time, including:
- 33.1.1 the Child Wellbeing and Safety Act 2005 (Vic) and the Working with Children Act 2005 (Vic); and
- 33.1.2 the University's Working with Children Policy, Reportable Conduct Policy and Child Safety Policy which are available at latrobe.edu.au/policies.
- 33.2 The Contractor must immediately notify the University if the Contractor becomes aware of any suspected breach of this clause and agrees to provide all reasonable information and assistance to the University (at any time) to review compliance with this clause, including to investigate any suspected breach.
- 33.3 The Contractor agrees that the University may immediately terminate this contract in the event of a breach of this clause by the Contractor.