

UNISA GENERAL TERMS AND CONDITIONS OF TENDER

1. General

- 1.1 These Terms and Conditions (“Agreement”) shall apply to each tender for the purchase of materials, supplies, equipment and services.
- 1.2 The reference to goods or services herein are as described in the tender specifications, in any other Agreement, or in terms of a Purchase Order in accordance with the above order of preference.
- 1.3 These Terms and Conditions are to be read and are accepted by the Supplier in addition to any terms specified in any other Agreement, in a Purchase Order and/or any attachment to it that is expressly incorporated in writing and terms contained in the University’s procurement policy available on http://www.unisa.ac.za/ungc/harmonised_p.html insofar as it relates to Supplier. No other terms or conditions shall apply under any circumstances except where the University first provides its agreement in writing.

2. Acceptance

- 2.1 The Supplier is taken to have accepted these terms and conditions on the acceptance of its tender by the University.
- 2.2 Once the Supplier’s tender is accepted by the University, these Terms and Conditions will form a binding Agreement between the University and the Supplier.

3. Fees and Invoices

- 3.1 In consideration for the provision of goods and/or services under these terms and conditions, the University agrees to pay to the Supplier the Fees specified in a Purchase Order upon the presentation of a tax invoice showing the Purchase Order number and other reference details as required by the University.
- 3.2 VAT (where applicable) shall be included in all fees and the Supplier shall ensure that it is registered as a vendor if legally required to do so.
- 3.3 Fixed tariffs shall be quoted by the Supplier and shall be inclusive of all costs such as insurance in transit, FOB import duties/taxes, packing and installation, handling, shipping and delivery charges.
- 3.4 Unless otherwise specified in a Purchase Order, the University agrees to pay the Supplier the Fees within (thirty) 30 days from the end of the month in which the invoice is received and accepted by the University and on completion of satisfactory delivery of goods/services as signed-off by an authorised representative of the University.
- 3.5 Claims for an increase in price due to a variation in the rates of exchange will only be considered if:
 - a) it was a condition of the order;

- b) the amount to be remitted overseas in foreign currency and the rate of exchange applied was stated in the order;
 - c) documentary proof of date of payment and the rate of exchange ruling at the time of payment is furnished; and
 - d) the order was satisfactorily executed within the stipulated delivery period
- 3.6 The exchange rate if applicable, is calculated on the date that a Purchase Order is issued and may be re-calculated every 60 days thereafter subject to the above-mentioned conditions.
- 3.7 The University shall be entitled to set-off any liability for payment which the Supplier has to it against any liability for payment which it has to the Supplier, whether such liability is present or future.
- 3.8. Hindrance as a result of the Supplier's conduct, shall entitle the University to a discount of 10% on each Purchase Order transactional value.
- 3.9. Hindrance as a result of the University conduct, shall entitle the Supplier to a fee of 10% on each Purchase Order transactional value
- 3.10 The University reserves the right to hold a maximum retention of not more than 50% on each Purchase Order transactional value until the goods and/or services are signed off as acceptable.
- 3.11 Any wasteful and unforeseen expenditure may vary at a maximum of 10% of the transactional amount which are to be already included in the Purchase Order.

4. Delivery, Inspection and Risk/Ownership

- 4.1 All goods and services shall be tendered by delivery to Purchaser at the time and place specified in a Purchase Order. If the Supplier fails to deliver or perform as and when required, the University, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights.
- 4.2 All goods and services delivered to the University for the first time, or on a re-occurring basis, will be rendered or delivered only after the date a Purchase Order is issued, or after the signing of an Agreement if applicable, failing which the Supplier shall render services and deliver the goods at its own risk. The University shall not be obliged to pay for such services or goods and the Supplier shall at its own costs remove goods and issue credit notes to the University for any invoices issued prior to the date of a Purchase Order.
- 4.3 The Supplier is responsible for maintaining and providing proof of delivery in the form of a delivery note signed by an authorised representative of the University.
- 4.4 After delivery of the goods or services, the University shall have the right within thirty (30) days from the date of delivery to inspect the goods or services. If all or any part of the goods or services are found to be non-conforming, the University may reject such non-conforming goods, whereupon

such rejected goods shall at the University's discretion be refunded, repaired or replaced at no cost to the University.

- 4.5 All risk in and ownership of goods supplied to University will pass to University once the Supplier has delivered the goods to the place of destination specified in the Purchase Order.
- 4.6 All foreign imports/exports are subject to prevailing INCOTERMS, unless formally amended by written agreement.

5. Indemnity, Insurance and Warranties

- 5.1 The Supplier indemnifies the University, including its officers, employees and agents, against all direct losses, consequential and indirect losses and damages including those arising out of any third party claim it directly or indirectly sustains or incurs as a result of:
 - a) any negligent, unlawful or wilful act or omission of the Supplier or Supplier personnel; or
 - b) any negligent acts or omissions of any subcontractor engaged by the Supplier,
- 5.2 The Supplier shall effect and maintain through the term of the Agreement the following:
 - a) Worker's Compensation Policy as required by law; and
 - b) Public and Products Liability Insurance for any one occurrence and shall ensure that any subcontractor engaged by it is insured to a level commensurate with the insurance obligations of the Supplier under the Agreement.
- 5.3 The Supplier represents and warrants that:
 - a) it has all rights, title, licences, interests and property necessary to provide the goods and/or perform the services;
 - b) the Supplier personnel will have all necessary skill, knowledge and competence to perform the services;
 - c) the goods and/or services will be fit for the purposes intended;
 - d) if applicable, the goods and/or services will meet any agreed design and performance criteria and correspond with any sample;
 - e) the goods will be complete, accurate and free from material faults in design and free from defects in materials, workmanship and installation;
 - f) the goods supplied and their packaging will comply with all statutory laws and regulations that may be applicable;
 - g) it will supply to the University all complete documentation associated with the use of the goods and/or services.
- 5.4 Goods and services not meeting the warranties shall at the University's election be refunded, repaired or replaced at no cost to the University.

- 5.5 All manufactured goods, chemicals or materials used by the Supplier shall comply with applicable requirements of the Occupational Safety Health Act. (Act No. 85 of 1993 and any standards thereunder).

6. Jurisdiction

These terms and conditions are governed by the laws of the Republic of South Africa.

7. Miscellaneous

- 7.1 The obligations of the parties under these terms and conditions Agreement, which by their nature would continue beyond the termination, cancellation or expiration of the Agreement, shall survive termination, cancellation or expiration of the Agreement.
- 7.2 The University reserves the right to retain other persons or entities to supply the goods and/or services including, but not limited to, any part of the goods and/or services.
- 7.3 Neither party shall hold itself as being:
- a) an agent, employee of the other party or in partnership; or
 - b) authorised to enter into any contract on behalf of the other party.
- 7.4 If there is an inconsistency between a provision in:
- a) A University contract entered into between the Supplier and the University for the goods and/or services
 - b) Tender Specifications;
 - c) Standard Tender Terms;
 - d) Purchase Orders;
 - e) Quotations; or
 - f) Supplier proposals
- then the first-mentioned terms shall prevail in the order set out above.
- 7.5 No amendments to these Terms and Conditions will be binding on the parties unless agreed to in writing by the University and the Supplier.
- 7.6 Except as expressly provided in the Purchase Order, the Supplier may not assign any rights or interest or subcontract any obligations under these terms and conditions without the prior written consent of the University. Where the Supplier subcontracts any of its obligations under the Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

8. Confidential Information

- 8.1 The Supplier shall keep confidential and not disclose and shall procure that his/her employees keep confidential and do not disclose any information of a confidential nature obtained by him/her by reason of its appointment except

information which is in the public domain otherwise than by reason of a breach of this provision; Confidential Information means all data and/or information exchanged between the parties for the purposes of the Agreement before, on or after the date of the Agreement relating to the operations, business, research and technology of the disclosing party.

8.2 The provisions of this paragraph shall apply during the continuance of the Supplier's appointment and after its termination howsoever arising.

9. Anti-corruption and Anti-bribery

9.1 The Supplier shall procure that the Supplier, its officers, employees' and agents shall:

- a) comply with all applicable Anti-Bribery and Corruption legislation;
- b) promptly report to the University any request or demand for any undue financial or other advantage of any kind offered in connection with the Supplier's appointment;
- c) comply with the University's Code of Conduct and Supply Chain Management Policy as is in force from time to time, and
- d) comply with any request or demand by the University for any statutory documents concerning the Supplier as prescribed for procurement by Public Institutions.

9.2 The Supplier shall adhere to the United Nations Global Compact (UNGC) principles which can be accessed on www.unisa.ac.za/ungc.

9.3 The Supplier acknowledges that the University is a Public Institution accountable to taxpayers and the Government and the Suppliers agrees to support the University in the execution and compliance of Section 217 of the Constitution of the Republic of South Africa. The University reserves the right to conduct an audit on the transaction where the Supplier is suspected of overreaching on pricing contrary to industry standards or for any reason where the Supplier's practises are construed as anti-competitive or corrupt.

10. Protection of Data

10.1 To the extent that the Supplier comes in possession of individual personal data owned or otherwise held by the University as a result of performing under the Purchase Order, the Supplier agrees to use such data, if at all, only to the extent required to perform its obligations under the Purchase Order and to abide by the requirements of the Protection of Personal Information Act 4 of 2013 regarding the protection and/or use of such data.

10.2 The Supplier shall be liable for any damages, penalties or fines imposed on the University on account of the Supplier's irregular use of individual personal data owned or otherwise held by the University.

11. Disqualification of Supplier for collusion

Reasonable grounds for believing that a Supplier is involved in more than one tender proposal for the same work will be cause for rejection of all proposals in which such Suppliers are believed to be involved. Any or all proposals will be rejected if there is reason to believe that collusion exists between Suppliers.

12. Dispute Resolution

12.1 Mediation

Should any dispute of any nature whatsoever arise out of, or in connection with or relating this Agreement, then the parties agree to first meet and use all their reasonable endeavours to negotiate in good faith a settlement of such dispute by way of mediation. Should such negotiations fail after 10 (ten) business days, or such longer period as agreed upon in writing, of referral of such dispute, the dispute will then be referred to arbitration.

13. Acceptance and Award of Tender

- 13.1 The University reserves the right to:
- a) withdraw a tender after issue; or
 - b) accept no submitted tender.
- 13.2 The University reserves the right to award by item, or part thereof, groups of items, or parts thereof, or all items of the tender; to reject any and all tenders in whole or in part; to waive any minor technical defects, irregularities or omissions if, in so doing the best interests of the University will be served. The University reserves the right not to accept any tender with the cheapest offer.
- 13.3 The award of a tender is conditional upon the Supplier concluding a contract with the University. The Supplier agrees to a term of contract which allows for the contract to be terminated out of convenience by the University after 6 months, by giving one calendar month prior written notice to the Supplier.

14. Change in Scope

The University reserves the right to change the scope and extent of supply of the goods and/or services requested in the tender and invite the re-submission of such tender on or before the closing date, without necessitating a new tender.

15. Arbitration

- 15.1. Should the parties fail to settle the dispute pursuant to the provisions of clause 15.1, then any dispute, deadlock and/or difference between the parties may be referred to and be determined through arbitration in terms of the rules of the Arbitration Foundation of South Africa.
- 15.2. Upon such referral, the costs of and incidental to the referral and award shall be in the discretion of the arbitrator, who may determine the quantum of the costs and liability for payment of such costs.
- 15.3. The award of the arbitrator shall be final and binding on the parties and any party shall be entitled to apply to the Courts to have such an award made an order of court.
- 15.4. This clause shall not preclude the parties from obtaining interim relief on an urgent basis in a Court of competent jurisdiction pending the decision of the Arbitrator. To this end, the parties hereby consent to the jurisdiction of the North Gauteng High Court, Pretoria.

16. Breach

- 16.1. Should either party (the "defaulting party") commit a breach of any of the provisions of this Agreement of Lease, then the party who is not in breach (the "aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach.
- 16.2. If the defaulting party fails to comply with that notice within 30 (thirty) days of the receipt thereof, subject to any other provisions of this Agreement of Lease to the contrary, the aggrieved party shall be entitled to cancel this Agreement or to claim specific performance, in either event without prejudice to the aggrieved party's rights to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in common law or statute. Save for consequential damages, liability for damages shall be limited to the transactional value in respect of the relevant Purchase Order.

17. Public announcements

Any public announcements concerning the Supplier and/or University in respect of the Purchase Order is prohibited.

18. Notices and Addresses

- 18.1 All notices which are given by the parties may be given to it at the address set out on the front page of Purchase Order, at which address it chooses *domicilium citandi et executandi* (the physical address at which legal proceedings may be instituted) for all purposes hereunder.
- 18.2 All notices sent by either party to the other shall be delivered by hand.
- 18.3 All notices delivered by either party to the other as aforesaid to the respective addresses provided for in this Agreement shall be deemed to have been received by the addressee on the date of delivery or on the third business day after posting, as the case may be, unless the addressee proves the contrary.
- 18.4 Any party shall be entitled, by prior written notice to the other to change its address to such other address within the Republic of South Africa, provided that the change shall become effective only 14 (Fourteen) days after service of the written notice in question.

I, the undersigned hereby agree to the above terms and conditions should the tender be awarded to the entity I represent.

Signed on this day of 20.....

by

in my capacity as

duly authorized on behalf of

Signature