1. General

1.1 These Standard Terms and Conditions (‘Conditions’) referred to in the Order apply to the arrangement between the University of Technology Sydney (‘UTS’) and You for purchase of the Supplies.

1.2 These Conditions apply to the exclusion of any terms or conditions appearing on any document of yours, other than any additional UTS right or any warranty offered by You which is not inconsistent with these Conditions.

1.3 The Order will only override these Conditions if the Order specifies the particular clauses of these Conditions which do not apply. Otherwise, if there is any inconsistency between the Order and these Conditions, these Conditions prevail to the extent of the inconsistency.

1.4 If there is any inconsistency between documents constituting the Order, a later document will prevail over an earlier document to the extent of any inconsistency.

1.5 No variation to these Conditions is binding unless it is in writing and signed by the parties.

1.6 In these Conditions, unless the context otherwise requires:

- **Goods** means the articles, goods, material referred to in the Order;
- **GST** and **GST law** have the meanings given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- **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** includes all intellectual property rights including copyright, patents, trademarks, designs, trade secrets, know-how, moral rights, any application for any of the foregoing and any rights of a similar nature to any of the foregoing;
- **Order** means an official UTS Purchase Order generated via UTS’ iProcurement system, which details the goods and/or services being purchased and includes any Specifications or other documents attached to, or incorporated by reference in, those documents and any amendments to the Order specifically agreed in writing by UTS and You;
- **Specifications** means any specifications, descriptions or statements of requirements of UTS in respect of the Supplies, whether part of, attached to, or incorporated by reference in, the Order, or otherwise made known to You;
- **Services** means the services (if any) referred to in the Order;
- **Supplies** means the Goods and/or Services; and
- **Total Price** means the price for the Supplies set out in the Order.

1.7 Unless the context otherwise requires: words importing the singular include the plural and vice versa; reference to a person includes a body corporate and a natural person, and headings are for guidance only.
2. **Performance and delivery**

2.1 You must deliver all Goods and perform all Services, including providing any deliverables specified in the Order, at the time and place and in the manner specified in the Order and, if no time is specified, as soon as practicable and in any event within a reasonable time.

2.2 You must ensure the Goods are packed to ensure their safe delivery and in accordance with any specific packing, marking or labelling required by UTS.

3. **Quality and compliance**

3.1 You must:

   (a) supply the Goods and perform the Services in accordance with all applicable laws, any requirements of relevant authorities, and any UTS policy notified by UTS;

   (b) perform the Services at a high standard with all due skill, care and diligence;

   (c) ensure the Supplies comply with the Specifications and any relevant standards;

   (d) ensure all Goods are new, free from encumbrance, free from defects in materials and workmanship, are of merchantable quality and are fit for their purpose; and

   (e) ensure all Services are free from defects in performance, meet their purpose, and are complete.

3.2 You represent and warrant that the Supplies will not introduce any Harmful Code into UTS’ systems, and that You will not, nor will You suffer or permit any third party under your direction or control to, introduce into UTS’ systems or any Supplies any Harmful Code in the course of providing the Supplies. If any Harmful Code is introduced, You must promptly notify UTS, take all necessary action to eliminate the Harmful Code and, at your own cost, repair any harm or destruction caused by that Harmful Code.

4. **Inspection/acceptance**

4.1 Despite clause 3, receipt of Supplies by UTS will not under any circumstances be deemed to be acceptance of those Supplies by UTS.

4.2 UTS may inspect the Goods at any time prior to acceptance and reject any Goods found not to be in accordance with the Order. After acceptance UTS may reject any Goods for any non-conformity with the Order which could not have been discovered by reasonable inspection before acceptance.

4.3 UTS is not liable to pay for any rejected Goods or for any damage or costs arising from inspection or rejection of Goods.

4.4 Without prejudice to any other right or remedy of UTS, if UTS rejects any Goods, You must comply with a requirement of UTS to, within 7 days (or such other timeframe agreed between us):

   (a) replace, without cost to UTS, the rejected Goods with goods that are in all respects in accordance with the Order;

   (b) refund any payment for the rejected Goods; or

   (c) repair the Goods, to the satisfaction of UTS.

4.5 If UTS requires You to submit samples of Goods, You must not proceed to bulk manufacture until UTS has approved the samples.
4.6 UTS may inspect the performance and outcome of the Services at any time. If the Services have not been performed in accordance with the Order, UTS may by notice require You to take all necessary steps to ensure that the Services are promptly corrected at no additional cost to UTS.

4.7 If You fail to correct the Services within 14 days after notification by UTS under clause 4.6, UTS may perform or have performed the necessary work and recover the cost from You without prejudice to any other rights or remedies UTS may have.

5. Passing of property

5.1 Title of the Goods free of any encumbrances passes to UTS on delivery of the Goods to the delivery address stipulated on the Order.

5.2 The risk in the Goods remains with You until the delivery to, and acceptance of, the Goods by UTS.

6. Warranty

6.1 Without limiting any other right or remedy of UTS, if UTS gives notice of any defect or omission discovered in Supplies during any warranty period offered by You (which will be deemed to be the longer of the warranty You offer UTS and the warranty offered to You by a third party manufacturer), You must correct that defect or omission without delay and at no cost to UTS.

6.2 Unless otherwise agreed in writing You must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

6.3 You must ensure UTS receives all standard manufacturer and other relevant third party warranties in respect of the Supplies.

7. Inclusive price

7.1 Unless otherwise specified in the Order, the Total Price includes:

(a) GST and all taxes, duties and other imposts in connection with the provision of the Supplies;

(b) all amounts payable for the use (whether in the course of manufacture or use of the Goods or the performance or enjoyment of the Services or the use of the outcomes of the Services) of any Intellectual Property; and

(c) all charges for supply of the Goods or the performance of the Services, and no extra charges will be made for testing, inspection, packing, delivery, insurance or otherwise.

7.2 If and to the extent that, for any reason, a supply made under the Order is not subject to GST, the amount payable or other consideration to be provided for that supply shall be reduced by 1/11th.

8. Intellectual Property

8.1 Upon its creation all Intellectual Property in material created by You for the purpose of, or as a result of, performing your obligations in fulfilling the Order vests in UTS. You must not use, disclose, copy or reproduce such Intellectual Property except for the purposes of fulfilling the Order.

8.2 To the extent that UTS needs to use:

(a) any material owned before the commencement of the Order by You;

(b) any material developed by You independently of performing your obligations in fulfilling the Order; or
any material owned by a third party that is included or embodied in or attached to the Order or used as part of the performance of the Order requirements;

to receive the full benefit of the Supplies, You grant to (or must obtain for) UTS a perpetual, worldwide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that material.

8.3 You warrant that it has the necessary rights to vest the Intellectual Property and grant the licences as provided in this clause 8.

8.4 You warrant that the Supplies and the material referred to in clauses 8.1 and 8.2 (Warranted Material) and UTS’ use of the Supplies and Warranted Material will not infringe the Intellectual Property of any person.

8.5 If someone claims, or UTS reasonably believes that someone is likely to claim, that all or part of the Supplies or Warranted Material infringes its Intellectual Property, You must, in addition to the indemnity under clause 8.6 and to any other rights that UTS may have against it, promptly, at your expense:

(a) use your best efforts to secure the rights for UTS to continue to use the affected Supplies or Warranted Material free of any claim or liability for infringement; or

(b) replace or modify the affected Supplies or Warranted Material so that the Supplies or Warranted Material 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 Supplies or Warranted Material.

8.6 You indemnify UTS against any loss, liability and expense 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 Supplies or Warranted Material.

9. Assignment and subcontracting

9.1 You must:

(a) not, without the consent in writing of UTS, assign or subcontract the whole or any part of the provision of the Supplies;

(b) on request, provide UTS with the names and other requested details of any of your subcontractors. agrees, and must ensure that any subcontractor agree, that UTS may disclose the subcontractor’s name publicly; and

(c) ensure that any subcontractor (including any subcontractor of a subcontractor) complies with all applicable laws and clause 14.

9.2 You will be liable to UTS for the acts and omissions of any subcontractor as if they were your acts and omissions.

10. Personnel

10.1 If the Order indicates that particular Supplier personnel are to be involved in performance of any Services, You must perform the Services using those personnel and must not change those personnel without prior written approval from UTS.

10.2 UTS may at any time request You to remove any of your personnel from work in respect of fulfilling Services. You must promptly arrange for the removal and replacement of such personnel.

11. Payment
11.1 The standard terms of settlement are net 30 days from the invoice date, providing it is a correctly rendered tax invoice for goods/services supplied to the satisfaction of the University. The preferred payment option is by Electronic Funds Transfer (EFT). Invoices that do not reference a University purchase order number may be returned to the supplier unpaid.

11.2 An invoice will be correctly rendered if it is addressed in accordance with and identifies the Order and is accompanied by reasonable documentation substantiating the amount claimed.

11.3 UTS is not required to pay You unless it receives a tax invoice for the Supplies to which the payment relates.

12. Order Cancellation for default

12.1 Without limiting any other rights or remedies UTS may have against You arising out of or in connection with fulfilling the Order, UTS may cancel the Order effective immediately by giving notice to You if:

(a) You breach a material provision of the Order where that breach is not capable of remedy;

(b) You breach any provision of the Order and fail to remedy the breach within 14 days after receiving notice requiring You to do so; or

(c) an event specified in clause 12.2 happens to You.

12.2 You must notify UTS immediately if 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, or are declared bankrupt or assigns your estate for the benefit of creditors or any analogous event occurs.

13. Order Cancellation for convenience

13.1 UTS may, at any time, by notice, cancel an Order.

13.2 If an order is cancelled under clause 13.1, UTS is liable only for:

(a) payments under clause 11 for Supplies provided in accordance with the Order before the effective date of cancellation; and

(b) reasonable costs actually incurred by You and directly attributable to the cancellation.

13.3 UTS is not liable to pay compensation under clause 13.2 for an amount which would (in addition to any amounts paid or due, or becoming due to You) exceed the Total Price.

13.4 You are not entitled to compensation for loss of prospective profits.

13.5 Cancellation of an Order under clause 12 or 13 does not affect any accrued rights or remedies of a party.

14. Protection of property and information

14.1 You must ensure that any material and UTS property (including security-related devices and clearances) provided by UTS for the purposes of fulfilling the Order are protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.

14.2 You must not disclose, and must ensure your officers, employers, agents and subcontractors do not disclose, confidential information of UTS. This clause 14.2 does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of these Conditions or which is required by law to be disclosed.

14.3 In relation to personal information obtained during the course of providing the Supplies, You must:
(a) use or disclose personal information only for the purposes of fulfilling the Order; and
(b) immediately notify UTS if You become aware of a breach or possible breach of any of your obligations under this clause 14.

14.4 You must obtain UTS' written agreement before making a public announcement in connection with the Order or any transaction contemplated by it, except if required by law or a regulatory body (including a relevant stock exchange).

14.5 If requested by UTS, You must provide, and must ensure that any personnel or subcontractor (including any subcontractor of a subcontractor) provides, UTS with a written undertaking in the form of a deed relating to the use and non-disclosure of personal information and UTS confidential information.

15. Use of UTS premises and facilities

15.1 You must, when using UTS' premises or facilities, comply with all reasonable directions of UTS relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by UTS or as might reasonably be inferred from the circumstances.

16. Insurance

16.1 You must have and maintain insurance cover which is usual and appropriate for the type of business engaged in by You and the provision of the Supplies, including, as applicable, product liability insurance, public liability and professional indemnity insurance. You must provide evidence of insurance upon request by UTS.

17. International sale of goods

17.1 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Order.

18. Waiver

18.1 Waiver of any provision of or right under the Conditions 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.

19. Negation of employment, partnership and agency

19.1 The Order does not create a relationship of employment, agency or partnership between You and UTS.

20. Applicable law

20.1 The Order and Conditions will be governed by, and construed in accordance with, the law in force in New South Wales.

21. Enquiries

21.1 Enquiries regarding the payment of invoices should be directed to the 'Invoice To' contact details provided on the Order. All other enquiries should be directed to the 'Deliver To' contact details provided on the Order.

22. UTS Code of Practice Procurement

All suppliers involved in supplying goods/services to UTS should familiarise themselves with the UTS 'Code of Practice for Procurement' which is available at the following public webpage: www.fsu.uts.edu.au/procurement/pdfs/Code_Of_Practice_Interim.pdf