



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

University of the Witwatersrand, Johannesburg

Standard Contract for the Acquisition of Goods and Services

Issued by:

Procurement Services

University of the Witwatersrand, Johannesburg

1 DEFINITIONS

Under these terms and conditions:

Acceptance Criteria means the acceptance criteria set out in the Scope of Work.

Aggrieved Party is either Party which claims that a material breach of this Agreement has occurred by the other Party (**Defaulting Party**).

Agreement means this Standard Contract for Acquisition of Goods and Services and its associated Supplement.

Background Intellectual Property means all Intellectual Property rights in existence before the commencement date of this Agreement as well as Intellectual Property developed by a Party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property.

Business Day means any day which is not a Saturday, Sunday or official public holiday in South Africa.

Business Hours means 08h00 to 17h00 on a Business Day.

Confidential Information means information that (a) relates to the University's past, present or future research, development, business activities, products, services, technical knowledge and personal information regarding any person, and (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the Supplier that it is claimed as confidential.

CPI means the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published by Statistics South Africa (or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it), which annual change shall be determined by comparing the most recently published index with the average index published over the 12 months preceding the anniversary of the Start Date, and applying the lower of the two compared indices.

Foreground Intellectual Property means such Intellectual Property as may be created or developed, including Background Intellectual Property forming an integral part of the Foreground Intellectual Property and not specifically excluded from the Foreground Intellectual Property, by the Supplier:

- a. during and as part of the rendering of the Services and in the fulfilment of its obligations in terms of this Agreement,
- b. in the course and scope of the Services,
- c. directly related to the Services, or
- d. resulting from overall system integration, refinements or resultant research or that which is derived from the Services.

Goods means the movable articles and things, including all accessories, appurtenances, materials, parts or components, and all ancillary and complementary things which are necessary for such articles and things to function properly, that are used therein or forming part thereof as described and to be supplied in the Scope of Work and the Order.

Intellectual Property or IP means intellectual capital embodied in any and all technical and commercial information, including, but not limited to chemical structures, biological or chemical information, manufacturing techniques and designs, specifications and formulae, know-how, data, systems and processes, production methods, methodologies, trade secrets, undisclosed inventions, financial and marketing information, as well as registered and unregistered intellectual property in the form of patents, trademarks, designs and plant breeders' rights (whether granted, registered or applied for, and copyright in any works including literary works or computer software programs).

Integrated System means the provision of Goods and Services together as an overall solution, and the proper functioning thereof with the existing infrastructure.

Legal Owner means the natural or juristic person that has an enforceable claim or title to the Goods, and is recognized as such by law.

Order means an official purchase order issued by the University for Goods and/or Services.

Party means either the University or the Supplier, and **Parties** means both of them.

Personnel means a Party's directors, officers, employees, associates, agents and/or representatives, and in the case of the Supplier, its sub-contractors (if any) and their respective directors, officers, employees, associates, agents and/or representatives.

Project means the details and work as described in the Scope of Work including all Services and Goods contained in this Agreement.

Scope of Work means that part of the Supplement that specifies and describes the Goods and Services which are to be provided and any other requirements and constraints relating to the manner in which the Project is to be performed.

Services means the performance of tasks, design and development work, provision of advice and counsel, assistance and/or support, the supply, installation, commissioning and integration of the Goods that the Supplier provides, as detailed in the Scope of Work.

Standards means the measures used by the University to assess the performance of the Supplier in terms of this Agreement.

Supplement means the Supplement to this Standard Contract for Acquisition of Goods and Services and includes the Form of Offer and Acceptance and the Scope of Work.

Supplier means the person or company to whom an Order is addressed and with whom a contract has been entered into on these conditions as identified in the Form of Offer and Acceptance.

Supplier Representative means the person nominated in the Scope of Work or otherwise in writing by the Supplier from time to time.

Term means the period from the **Start Date** to the **End Date** described in clause 4 (Term Of This Agreement).

University means the University of the Witwatersrand, Johannesburg, a public higher education institution recognised as such in terms of the Higher Education Act, 1997, as identified in the Form of Offer and Acceptance.

University Precincts means any premises owned by or which fall under the management and control of the University.

University Representative means the person nominated in the Scope of Work or otherwise in writing by the University from time to time.

2 RULES OF INTERPRETATION

Clause headings are for convenience and will not be used in the interpretation of this Agreement.

Unless the context indicates a contrary intention an expression which denotes:

- Any gender includes the other genders,
- A natural person includes a juristic person and vice versa,
- The singular includes the plural and vice versa, and
- References to clauses, schedules, parts and sections are, unless otherwise provided, references to clauses, schedules, parts and sections of this Agreement.

3 COMPLETE CONDITIONS

The Order is subject to these conditions. Notwithstanding anything to the contrary in any document issued or sent by the Supplier to the University, these conditions apply except as expressly agreed in writing by the University. No servant or agent of the University has authority to vary these conditions orally. These general conditions of purchase are subject to such further conditions as may be agreed upon in writing by the University and the Supplier.

It is specifically agreed that any terms and conditions on any quotation, delivery note or other documentation provided by the Supplier will be of no force and effect, and the University will not be bound by any such terms and conditions.

4 TERM OF THIS AGREEMENT

The Start Date of this Agreement is specified in the Supplement and, subject to the further provisions of this Agreement, continues until completion of the Project but no later than the End Date specified in the Supplement.

5 SUPPLIER RESPONSIBILITIES

The Supplier will:

- designate the Supplier Representative. The Supplier may from time to time and on written notice designate other persons to act as its Representative. This Representative will liaise with the University as often as required for the efficient implementation of the Project and is authorised to transmit instructions from the Supplier to the University, and to receive information from the University, submit to the University reports as appropriate, which may include partial reports released from time to time at dates as may be designated in the Scope of Work,
- provide the Goods and/or Services in accordance with, and as specified in, this Agreement,
- assign a Personnel complement sufficient both in numbers and skills to ensure due and proper performance of its obligations under this Agreement,.
- perform the Services with due care and skill and in accordance with the degree of skill, care and diligence normally exercised by recognised professional persons or firms who supply Services of a similar nature,
- if and whenever the University gives it written notice of any deficiencies in performing its obligations hereunder, the Supplier undertakes to acknowledge such notice in writing within 5 days,
- provide continued training and development for all of its personnel in those skill areas relevant to the performance by the Supplier of its obligations under this Agreement,

- ensure that the Goods and Services must be fit for the purposes for which these types of Goods and Services are commonly required and for any other purposes described in this Agreement,
- ensure that it and its personnel comply with all applicable laws and the University's rules, regulations and policies, procedures and standing orders, as may be amended from time to time. Without limiting the generality of this, the Supplier must comply with legislation relating to the rendering of the Services and delivery of the Goods, and
- keep statistics, minutes and other records required by legislation on file and available for inspection by the University's appointed administrator.

6 UNIVERSITY RESPONSIBILITIES

The University will:

- designate the University Representative. The University may from time to time and on written notice designate another person to act as its representative. This representative will liaise with the Supplier as often as required for the efficient implementation of the Project and is authorised to transmit instructions from the University to the Supplier, and to receive information from the Supplier,
- either directly, or through the University Representative, instruct the Supplier regarding the University's requirements in connection with the Project. The University Representative is authorised to define and interpret the University's requirements regarding the Goods and Services and convey decisions pursuant to the Project to the Supplier and to receive information from the Supplier on behalf of the University,
- provide the Supplier with such access as may be necessary to deliver the Goods and to enable the Supplier to perform the Services required of the Supplier,
- make available all information as may be necessary to enable the Supplier to fulfil its obligations under this Agreement,
- give written notice to the Supplier if and whenever it becomes aware of any deficiencies in the Services provided hereunder, and
- pay the Supplier as provided for in clause 8 of this Agreement.

7 ACCESS TO UNIVERSITY PRECINCTS

The University may require the Supplier to effect the immediate removal from the University Precincts of any Personnel, guest or invitee of the Supplier, or any other person acting on its behalf, if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Supplier must ensure that that person does not return to the University Precincts without the University first having given the Supplier its consent for that person to return. Removal by the Supplier of such person/s shall not be a ground for any relaxation of the Supplier's obligations hereunder.

The Supplier shall not remove any goods of whatever nature from the University Precincts without the written permission of the University's Director: PIMD or his or her nominee or the Chief Financial Officer or his or her nominee or the Director: Legal Services or his or her nominee.

In so far as the Supplier's Personnel need to meet with a recognised union in terms of a collective agreement between the Supplier and such union, specific arrangements must be made with the relevant University structures prior to any such meeting that properly addresses:

- the University's operational requirements,
- the fulfilment of the University's other contractual obligations, and
- any other conditions regarding union meeting time and place that are reasonable and necessary to safeguard life or property, and to prevent the undue disruption of work.

All gatherings will be subject to the University's regulations.

8 PRICE AND PAYMENT

The Prices for Goods specified in the Supplement or Order are fixed for the Term and include:

- amounts payable in South African Rand only,
- VAT and all other taxes (insofar as they are applicable),

- all the Supplier's costs in supplying the Goods including costs related to materials, labour, manufacture, packaging, handling, storage, delivery, shipment, transportation, duties, installation, inspection, testing, insurance (if any required), applicable University staff training, and
- documentation to be provided for the Order.

The Prices for Services specified in the Supplement remain unchanged for the first 12 months of the Agreement. Thereafter, such amounts may be adjusted in accordance with CPI on the first and each subsequent annual anniversary of the Start Date, provided that the Supplier gives one month's prior written notice of such adjustment. The Prices for Services include VAT and all other taxes (insofar as they are applicable) and insurance as required.

Upon final delivery of the Goods set out in the Order and for the Services on the Payment Date specified in the Scope of Work, the Supplier will submit the relevant valid tax invoice to the University. Unless stated otherwise in the Order, the University will pay within 30 (thirty) days from the date of such invoice. If Goods are to be delivered in batches, each invoice will be marked with an appropriate batch Order number.

The University reserves the right to reject any invoice submitted by the Supplier that is not valid as described below, is incomplete or the Goods and/or Services have been incorrectly supplied. In the case of incomplete invoices the University will only pay amounts that have the correct supporting documentation. An invoice will be valid only if it:

- sets out the amount and method of calculation of any tax payable,
- displays the VAT numbers of the University and the Supplier,
- clearly indicates the University's Order number and the Supplier's tax invoice number,
- is accompanied by original invoices from the Supplier's suppliers and/or sub-contractors as applicable,
- contains the Supplier's banking details for payment,
- is accompanied by all other relevant substantiating and supporting documentation required by the University (including a copy of the Order), and
- is addressed to:

The Central Creditors Department
7th Floor, Senate house
University of the Witwatersrand, Johannesburg
1 Jan Smuts Avenue
Braamfontein

marked in each instance for the attention of: The Credit Manager
(email: ommesh.bennie@wits.ac.za)

9 DELIVERY AND INSPECTION OF GOODS

The Parties agree that delivery and inspection of Goods will be performed in accordance with the provisions of this clause 9.

The Supplier will be responsible for the payment of any income tax and any other levies or any increases thereon imposed by the South African Revenue Service, the State or other authorities which is payable in respect of the operation of or existence of this Agreement.

Delivery and Documentation

The Supplier's obligation is to deliver the Goods on or before the date stated in the Supplement or in the Order if revised. The Supplier will:

- securely package supplied Goods in boxes, crates or drums or in a manner or form so as to adequately protect the Goods when transported and stored (unless otherwise stated in the Order, no payment is made for containers or packing materials or their return to the Supplier),
- clearly mark the outside of each consignment or package with the Supplier's name and full details of the destination in accordance with the Order and include a packing note stating the contents thereof, and

- on despatch of each consignment, send to the University at the address for delivery of the Goods, an advice or delivery note specifying the means of transport, weight, number or volume as appropriate and the point and date of despatch.

The Supplier will not be entitled to give, nor will the University be required to take, partial or late delivery of Goods, unless specified in the Order and/or agreed to by the University in writing.

Delivery, including complete delivery and acceptance, of the Goods by the Supplier will only be made during normal working hours, unless otherwise arranged in advance with the authorised representative of the University. The Supplier must timeously notify the authorised representative of the University at the place of delivery of the Supplier's intention to deliver the Goods so as to allow the University to make appropriate arrangements for the off-loading and storage of the Goods.

Prior to, or together with, the delivery of the Goods, the Supplier will furnish the University with all documentation containing operating and maintenance instructions for the Goods.

Should the Supplier at any time become aware that it will not be able to deliver the Goods on the agreed date of delivery, then it will immediately notify the University in writing of such inability and of an alternative later delivery date by which the Goods will be delivered. It will be within the University's sole discretion whether or not to accept such later alternative delivery date.

Should the University not accept such later alternative delivery date, or should the Supplier fail to give such notice, and should the Supplier fail to deliver all of the Goods on delivery date relevant to such Goods, then the University will immediately, and without prejudice to any claim for damages which the University may have, be entitled to cancel all or any portions of the Order by giving written notice to the Supplier. The University will not be liable to compensate the Supplier in any way, save that where the University has only partially cancelled the Order, the University will be liable to pay for the portion of the Order not cancelled, which payment will be made in accordance with the terms and conditions herein.

Inspection and Rejection of Goods

The University or its nominated representative will at all reasonable times prior to and after delivery of Goods be entitled to inspect or test any Goods to be supplied by the Supplier.

Should any inspection prior to delivery of the Goods, reveal that the Goods are, in the reasonable opinion of the University, defective in any manner, then the University reserves the right to either cancel all or any part of the Order relating to such Goods, or to require the Supplier, at the University's election, to repair, replace or remedy the defective Goods without prejudice to any claim which the University may have for damages, by giving written notice to that effect to the Supplier, and/or demand a refund of all monies paid.

If the Supplier fails to comply with his obligations under the Order, the University may reject any part of the Goods by giving written notice to the Supplier specifying the reason for rejection and whether replacement Goods are required and within what time. Thereafter, the University returns the rejected Goods to the Supplier at the Supplier's risk and expense. Any money paid to the Supplier in respect of Goods not replaced within the time required, together with the costs of returning rejected Goods to the Supplier and obtaining replacement goods from a third party are paid by the Supplier to the University.

10 UNIVERSITY'S PROPERTY IN POSSESSION OF SUPPLIER

Unless agreed in writing by the University, the Supplier must supply, at the Supplier's own expense, all labour, plant, equipment, tools, appliances or other property and items the Supplier requires to fulfil the Supplier's obligations in terms of any Order.

Any plant, equipment, tools, appliances or other property and items that the University provides to the Supplier to enable the Supplier to fulfil its obligations in terms of any Order remain the University's property and must only be used for the purposes of fulfilling the Supplier's obligations in terms of that Order.

The Supplier must keep the University's property in good order and condition, subject, in certain specified cases, to fair wear and tear.

The Supplier is responsible and must compensate the University for any loss or damage to or waste of the University's property by the Supplier's personnel, sub-contractors or representatives.

11 TITLE AND RISK

Without prejudice to rights of rejection under these conditions and subject to clause 12 (Warranties), ownership of, including risk in the Goods passes to the University, which becomes the Legal Owner, when the Goods are delivered at the address given in the delivery instructions and accepted and paid for in full by the University.

12 WARRANTIES

The Supplier warrants that the Goods:

- are free of any encumbrances and liens and the Supplier is the Legal Owner upon delivery,
- will, unless otherwise specified in the Order Form, be new and in good condition and no second-hand, used, reconditioned, old or previously sold and returned Goods, materials, parts or components will be supplied or used by the Supplier in the supply of the Goods,
- will be of the equivalent type and quality as any sample which may have been provided by the Supplier,
- comply with any applicable standards of the South African Bureau of Standards and any other standards specified in this Agreement,
- will be free from patent and latent defects in design and manufacture, defective materials and workmanship and general failure, save where same arises from fair wear and tear, for a period of 18 (eighteen) months after delivery thereof to the University or for a period of 12 (twelve) months from the time that the University puts such Goods into operation and use, whichever period expires earlier, provided that the defect in such Goods will not be as a result of improper use of the Goods,
- will be in good working condition on the date of delivery to the University, and
- when supplied, will comply with all relevant laws and regulations relating to their manufacture, use, export and import; and that no intellectual property rights, including patents, copyright or trademarks will be breached or infringed upon in the supply or use of the Goods.

The Supplier warrants that, in respect of the Services:

- it has the capacity to perform the Services timeously and competently,
- in performing the Services the Supplier will employ only persons who are careful, competent and efficient, and who are properly qualified and skilled to render the Services, and
- the Services will comply with the University's specifications, Standards and such other requirements as may reasonably be inferred from the Scope of Work. Any departure from such specifications or Standards is a breach of this Agreement unless such departure has been authorised in advance by the University.

The Supplier warrants that, in respect of an Integrated System:

- all components of the Integrated System will be compatible and properly interoperable with each other, and
- the Integrated System will meet the Acceptance Criteria specified in the Scope of Work. This warranty is in addition to the other warranties set out in this Agreement, including manufacturer's warranties. If the Integrated System does not function as warranted, the Supplier will correct the deficiency without charge. If the Supplier is unable to do so, the University may return the Integrated System to the Supplier who will refund the University any monies paid for it.

These warranties are in addition to any other rights of the University in this Agreement or in law.

13 INDEMNITY & LIABILITY

Without limiting any other obligation of the Supplier under this Agreement or otherwise, the Supplier will do all that is reasonably necessary within the course and scope of this Agreement to prevent or minimize the risk of loss or damage to property and injury to persons by fire, theft, burglary or vandalism or by any other means.

The Supplier will be liable for any loss of, or damage to its and/or the University's property or any financial loss suffered by it and/or the University or for claims arising out of any damage to property or death or injury to any person in the course and scope of the delivery of the Goods and/or Services and/or for any act or omission by the Supplier and/or its Personnel and/or agents; and

The Supplier hereby indemnifies and hold the University harmless:

- against all claims of whatsoever nature and howsoever arising which may be made against the Supplier and/or the University by any Personnel of the Supplier for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the University Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel.
- in respect of all actions, proceedings, liabilities, claims, damages, costs, and expenses arising out of the acts and/or omissions of its Personnel, and
- from any liability arising from:
 - any breach of laws or regulations by the Supplier;
 - work-related injury or death caused by the Supplier including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Supplier; and/or
 - from any costs incurred by the University in connection with the enforcement of this clause 13 (Indemnity & Liability).

The University has insured itself against the acts and omissions of persons acting on its behalf insofar it is liable in law therefor and its registered students and staff are insured during the course and scope of their registered courses and within the scope of the University's business, where fault can be attributed to the University or its affiliates. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover.

In cases where no fault can be attributed to either of the Parties, the Parties hereby indemnify, absolve and hold harmless each another, their officials, employees and invitees in respect of any damage to the property, death or bodily injury to or of any person, or any other cause, caused by or arising from or in connection with any act or omission in terms of this Agreement, whether arising from contract, delict (including negligence and gross negligence) or otherwise.

14 CONFIDENTIALITY

The Supplier will treat as confidential all Confidential Information which it may, in terms of this Agreement, receive from the University, or which becomes known to the Supplier in the course of fulfilling its obligations under this Agreement, and not divulge to any other party in any other circumstances any such information, whether during the currency of its relationship with the University or at any time thereafter, unless the prior consent of the University has been obtained.

The Supplier may not divulge, and will procure that any of its employees or agents do not divulge, to any person, other than its duly authorised representative and its own staff, and only if this is necessary for the proper rendering of the services under this Agreement, any Confidential Information arising out of the performance of, related to or discovered in the course of the performance of the services required under this Agreement, without the prior written authority of the University.

The above obligation of confidentiality will not apply to information which:

- becomes known by third parties through no fault of the Supplier;
- is or becomes published otherwise than by unauthorised publication in breach of this Agreement;
- can reasonably be demonstrated to be known to the Supplier prior to disclosure under this Agreement;
- is disclosed to the Supplier by another party entitled to disclose the information;
- the University hereto agrees to release;
- is in the public domain; or
- is required to be disclosed by law.

The Supplier undertakes promptly to return or destroy such Confidential Information on request from the University and promptly confirm in writing to the University that such action has been taken.

15 FORCE MAJEURE

Neither Party will be held liable to fulfil its obligations under this Agreement if such failure is caused by circumstances beyond its reasonable control, including, but not limited to, fire, flood and breakdown of external services.

The affected Party must take all reasonable steps to limit the duration of the failure to fulfil its obligations and duties in terms of this Agreement, and should make every effort to provide the best service possible under the circumstances.

16 INTELLECTUAL PROPERTY & PROPRIETARY RIGHTS

The ownership of Background Intellectual Property of the Agreement will be and remains unaffected hereby. Where one Party grants the other access to its Background Intellectual Property, this is restricted to a non-transferable right of use during the course of this Agreement.

The rights of ownership of Foreground Intellectual Property arising from the Project will be retained by the University.

All reports that the University commissions the Supplier to develop or write for the University remain the exclusive property of the University.

17 BREACH & TERMINATION

The University may terminate any Order at any time (without prejudice to any right of action or remedy which has accrued or thereafter accrues to the University) if the Supplier defaults in due performance of the Order.

In the event of a Material Breach of this Agreement by the Defaulting Party, the Aggrieved Party may elect to terminate this Agreement by following the process set forth in this clause 17. For the purposes hereof, **Material Breach** in respect of the Supplier, includes, but is not limited to, misrepresentation or breach of warranty which constitutes fraud by the Supplier, any acts or omissions of the Supplier which cause a material breach of the confidentiality provisions of the Agreement, the Supplier's performance is materially deficient, or there are repeated non-material service delivery failures by the Supplier which in the aggregate could reasonably be considered material.

The Aggrieved Party will provide the Defaulting Party with written notice of such material breach within 7 (seven) days of the material breach, and will provide the Defaulting Party with the opportunity to remedy the material breach as follows:

- in the event of a failure to pay any amount due on the date payable, 14 (fourteen) days after receipt of such written notice; and
- in the event of any other material breach, 14 (fourteen) days after receipt of such written notice.

If the material breach is not remedied during the applicable remedy period set out above, the Aggrieved Party may, in addition to any other common law or statutory remedies it may have:

- with notice to the Defaulting Party, claim specific performance from the Defaulting Party of all the Defaulting Party's obligations whether or not the due date for performance has arrived, and
- terminate this Agreement and claim from the Defaulting Party such damages as the Aggrieved Party may suffer.

Upon written notice, the University may terminate this Agreement if the Supplier becomes insolvent or otherwise is, in the opinion of the University, in such financial circumstances as to prejudice the proper performance of the Order.

18 DISPUTE RESOLUTION

The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.

Within a period of 14 days after the date on which the dispute arose (**the Dispute Date**) the Parties will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.

If the Parties are unable to resolve the dispute amicably within 30 days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or a Deputy Vice-Chancellor and the Supplier's Chief Executive Officer or their

duly appointed representatives, who will use their best endeavours to resolve the dispute. Their determination will be final and binding and will be carried into effect by the Parties.

If the individuals described above fail to resolve the dispute within a period of 30 days after it has been referred to them, either Party will be entitled to refer the dispute for adjudication by a competent South African Court, unless the Parties agree to resolve such dispute by arbitration in terms of a separate arbitration agreement between the Parties.

The University and the Supplier irrevocably consent and submit to the exclusive jurisdiction of the South Gauteng High Court, Johannesburg for the adjudication of such disputes.

19 NOTICES

Any notice in connection with this Agreement may be sent to either Party at the applicable addresses set out in the Form of Offer and Acceptance section of this Agreement.

Unless the addressor is aware, at the time the notice would otherwise be deemed to have been given that the notice is unlikely to have been received by the addressee through no act or omission of the addressee, the notice will be deemed to have been duly given:

- seven (7) days after posting, if posted by registered post to the Party's address,
- on delivery, if delivered to the Party's physical address, or
- on despatch, if sent to the Party's then fax number or email address and confirmed by registered letter posted no later than the next Business Day.

Notwithstanding anything to the contrary herein contained a notice or communication actually received by a Party will be an adequate notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address above.

The Parties choose the physical addresses in The Form of Offer and Acceptance at which documents in legal proceedings in connection with this Agreement may be served (i.e. their *domicilia citandi et executandi*). A Party may change its address for this purpose to another physical address in the Republic of South Africa at which legal process can be served, by notice to the other Party.

All notices and correspondence in connection with this Agreement will be in the English language.

20 GENERAL CONDITIONS

- Nothing contained in this Agreement will be construed as creating a partnership between the Parties or as deeming either Party as an agent or representative of or employee of the other. Neither Party may act as the agent of the other Party or incur any liability on behalf of the other Party.
- Neither Party may rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- The Supplier may not cede, assign or subcontract, insofar as any of the aforementioned is applicable, any of its obligations or rights under this Agreement without the prior written consent of the University.
- Neither Party is regarded as having waived, or is precluded in any way from exercising any right under or arising out of this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgency to, the other Party with reference to any performance of any obligation under this Agreement, or having failed to enforce, or delayed in enforcing any right of action against the other Party.
- Nothing in this Agreement will be construed as precluding or limiting in any way the right of either Party to provide and/or source, as the case may be, services of a similar nature to the Goods and Services or other services of any kind or nature whatsoever to or from any person or entity as each Party, in its sole discretion, deems appropriate.
- In the event of any clause of this Agreement or any part thereof being found to be invalid for any reason whatsoever, such clause or part thereof will be severable from the remainder of this Agreement and will not affect the validity of such remainder.
- Neither Party grants the other the right to use its trademarks, trade names, logos or other such designations in any promotion or publication without prior written consent.
- This Agreement is governed by the laws of the Republic of South Africa and is subject to the jurisdiction of South African Courts.

- This terms and conditions of this Agreement prevail in the event of conflict with any Supplier terms and conditions including in any Supplier quotation, any Supplier standard or other terms and conditions, and in any Supplier invoice.
- The Agreement is the entire agreement between the Parties relating to the subject matter hereof and no amendments to or deviations from this Agreement are of any force or effect unless reduced to writing and signed by the Parties.

21 WHERE THE SUPPLIER IS AN INDIVIDUAL

In instances where the Supplier is an individual person, the Supplier will be responsible for the payment of any income tax and any other levies or any increases thereon imposed by the South African Revenue Service, the State or other authorities which is payable in respect of the operation of or existence of this Agreement.

The Supplier warrants that it has read and understands the requirements of the Fourth Schedule to the Income Tax Act no 58 of 1962 (**the Income Tax Act**) pertaining to the taxation obligations of independent contractors, labour brokers and personal service providers, as defined in the Fourth Schedule to the Income Tax Act.

Unless the Supplier can provide the University, on reasonable request by the University, with satisfactory proof that he is not an Employee, as defined in the Fourth Schedule to the Income Tax Act, The University may withhold employee's tax from the remuneration paid by the University to the Supplier for the delivery in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Supplier.