

22 September 2016

PAYO SCIENTIFIC PTY LTD PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions and interpretation

1.1 Definitions

“Agreement” means the legally binding agreement between the parties formed in accordance with clause 2.1 of these Terms and Conditions and constituted by the documents referred to in clause 2.2.

“Confidential Information” means all information disclosed by a party to the other party for the purposes of this Agreement relating to the operations, business, research or technology of the disclosing party and any information marked or identified by the disclosing party as confidential.

“Goods” means the goods to be provided to PAYO SCIENTIFIC by the Supplier under the Purchase Order.

“GST” means the goods and services tax imposed under the A New Tax System (Goods and Services Tax) Act 1999 and related legislation.

“Intellectual Property” means all intellectual property, including but not limited to copyright, inventions, patents, rights in designs, circuit layouts and trademarks capable of protection at law.

“Purchase Order” means the completed PAYO purchase order form issued by PAYO to the Supplier which identifies the Supplier and includes a description and the price of the Goods and/or Services and includes the documents referred to in or attached to the Purchase Order.

“Services” means the services to be provided to PAYO by the Supplier under the Purchase Order.

“Specification” means any specification applying to the Goods and/or Services and referred to in or attached to the Purchase Order.

“Supplier” means the party providing the Goods and/or Services identified in the Purchase Order.

“Terms and Conditions” means these terms and conditions.

“PAYO” means the PAYO SCIENTIFIC PTY LTD or, where the party named in the Purchase Order as the purchasing party is a related body corporate (as that term is defined in the Corporations Act 2001) of PAYO, a reference in these Terms and Conditions to PAYO is to be taken to be a reference to that related body corporate, with the exception of clause 2.2 (a).

“Warranty Period” means the period commencing on the date of supply of any Services or of any Goods to the nominated delivery point and lasting for a period of one year unless otherwise stated in the Purchase Order.

1.2 Interpretation

Unless the contrary intention appears in these Terms and Conditions:

- (a) a reference to the singular includes the plural and vice versa; and
- (b) a reference to a person includes that person's successors, administrators, executors and assigns

and a firm, body corporate, partnership, joint venture, unincorporated body or association or any government agency.

2. Agreement

2.1 The Supplier is taken to have accepted a Purchase Order if it notifies PAYO of its acceptance, or at such earlier time as it delivers, or commences to deliver, or perform the Goods and/or Services. These Terms and Conditions apply between the parties as a binding agreement from the time of the Supplier's acceptance and the Supplier agrees to supply the Goods and/or perform the Services in accordance with this Agreement.

2.2 If there is any inconsistency between a provision of:

- (a) an existing written contract between PAYO and the Supplier for goods and/or services of the kind described in the Purchase Order as Goods and/or Services;
- (b) these Terms and Conditions;
- (c) any other terms and conditions expressly incorporated into the Purchase Order;
- (d) any document annexed or attached to the Purchase Order, or
- (e) any document proffered by the Supplier which has been signed on behalf of PAYO and returned to the Supplier,

The first-mentioned provision shall take precedence in the order set out in this clause.

2.3 The Supplier represents and warrants that it has carefully examined all documents furnished by PAYO and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances including site conditions which might affect the supply of the Goods and/or performance of the Services.

2.4 No amendment to the Purchase Order will be binding on the parties unless approved in writing by an authorised PAYO delegate.

2.5 The Supplier must not subcontract or assign all or any part of the Purchase Order without the prior written approval of PAYO.

2.6 Where the Supplier subcontracts any of its obligations under this Agreement, the Supplier remains liable for the performance of all its obligations under the Agreement.

3. Variation

3.1 The Supplier must not vary the Purchase Order except as directed and approved by PAYO in writing.

3.2 PAYO may propose to vary the Purchase Order by notice in writing and the Supplier must use reasonable endeavours to comply with any such request.

3.3 If a variation is directed by PAYO, the Supplier must promptly notify to PAYO:

- (a) the additional or reduced costs resulting from the proposed variation under clause 3.2, and
- (b) any revised delivery or completion times as a result of the proposed variation.

3.4 If the parties agree, the Purchase Order shall be amended by PAYO to reflect the agreed variation including costs and changes to delivery times.

4. Performance and quality

4.1 The Supplier warrants that:

- (a) the Supplier and all personnel engaged by it in connection with carrying out the obligations of the Purchase Order have the resources and the competence, skill and knowledge to perform the Services and/or complete delivery of the Goods;
- (b) the Goods and/or Services will be fit for the purpose intended and fit the description of the Goods and/or Services referred to in the Purchase Order;
- (c) where applicable the Goods and/or Services will match any sample or demonstration of the Goods and/or Services given to PAYO by the Supplier;
- (c) the Goods and any applicable installation of them will be complete, accurate, of merchantable quality and free from defects in design, materials, workmanship;
- (e) it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;
- (f) where applicable it is entitled to use and licence, free from encumbrances, any Intellectual Property rights used or transferred to PAYO under this Agreement and the University's use of the Goods and/or Services or any licence granted under clause 5.2 will not infringe the rights of any owner of the Intellectual Property; and
- (g) it will supply to PAYO all documentation associated with the use of the Goods and/or Services.

4.2 The Supplier must comply with the standards of quality specified in the Purchase Order, any Specification and comply with any law or regulation applicable to the Goods and/or Services.

4.3 If no standards are specified the Supplier must comply with the best quality standards applicable to goods and services of the kind referred to herein as the Goods and/or Services.

4.4 PAYO may on reasonable notice inspect the Goods prior to delivery and the Supplier shall give PAYO all reasonable access to premises during business hours to enable such inspection.

4.5 The warranties referred to in clause 4.1 are in addition to any statutory warranties applicable to the Goods and/or Services.

4.6 During the Warranty Period PAYO may give written notice to the Supplier of any failure or defect in the Goods and/or Services.

4.7 The Supplier must promptly correct any defect or failure in the Goods and/or Services at no cost to PAYO by repair, replacement, modification or other means acceptable to PAYO.

4.8 If the Supplier fails to correct any defect or failure of which it has been notified by PAYO under clause 4.6 within the time specified in the notice (which shall not be unreasonable), PAYO shall have the right to rectify the defect or failure itself or have the rectification undertaken by a third

party. All costs incurred shall be a debt due and payable by the Supplier to PAYO and may be deducted from moneys which may otherwise be payable by PAYO to the Supplier.

5. Intellectual Property

- 5.1 Neither party assigns any of its existing Intellectual Property rights to the other party by the supply or receipt of any Goods and/or Services under the Agreement.
- 5.2 The Supplier grants to PAYO, or will procure from any third party owner for the benefit of PAYO, a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sub-licence) to use, reproduce, modify, publish, adapt or communicate to the public the Intellectual Property in the Goods and/or Services so as to enable PAYO's full use of the Goods and/or Services.
- 5.3 The Supplier agrees that any Intellectual Property created in the process of supplying the Goods to PAYO under the Purchase Order shall vest in and remain the property of PAYO.
- 5.4 If a third party claims, or PAYO reasonably believes that a third party is likely to claim, that the use by PAYO of all or part of the Goods and/or Services infringes its Intellectual Property rights, or breaches its confidences, the Supplier must, in addition to the indemnity under this Agreement and to any other rights that PAYO may have against it, promptly at the Supplier's expense:
- (a) use its best efforts to secure the right for PAYO to continue to use the affected Goods and/or Services free of any claim or liability for infringement; or
 - (b) replace or modify the affected Goods and/or Services so that they, or the use of them, does not infringe the Intellectual Property rights of any other person, without any reduction in the performance or quality of the affected Goods and/or Services.

6. Delivery of goods and services

- 6.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered by the Supplier to the nominated PAYO address, adequately packaged and protected to ensure safe delivery to the delivery point and by the delivery date specified in the Purchase Order. The Goods shall be accompanied by a delivery document, which identifies the Purchase Order's specific number. Any signature of a PAYO staff member placed on the delivery document at the point of delivery will represent PAYO's acknowledgement of delivery of the Goods but not acceptance of any terms and conditions of the Supplier contained in the delivery document.
- 6.2 The Goods shall become the property of PAYO and risk shall pass to PAYO upon delivery of the Goods to PAYO. Notwithstanding that PAYO takes delivery of the Goods or pays any Supplier invoice, the Supplier shall, for a reasonable period after delivery, be responsible for any loss or damage to the Goods which may have occurred prior to delivery and for any noncompliance of the Goods, at the time of delivery, with the requirements of the Purchase Order.
- 6.3 If the Supplier becomes aware that a delay in delivery of Goods and/or Services may or will occur, it must notify PAYO promptly. PAYO may in its discretion grant an extension of time to any specified delivery date provided that the delay is due to a cause beyond the reasonable control of the Supplier and further provided that the Supplier satisfies PAYO that it has used its best endeavours to prevent or overcome the delay.

6.4 Where the Purchase Order requires the Supplier to supply Goods or provide Services which are or may be hazardous or dangerous to persons or property, the Supplier, must at or before delivery of the Goods or at any relevant time in relation to performance of the Services, provide PAYO with relevant and appropriately detailed information and documentation as required under applicable legislation (including that which relates to dangerous goods, occupational health and safety and the environment) and as may otherwise be reasonably required to enable PAYO to safely receive, handle, store and use the Goods or receive the Services.

7. Payment

7.1 Except as otherwise stated in the Purchase Order or agreed in writing by the parties, the price payable to the Supplier under the Purchase Order is the GST-inclusive price, is fixed and is not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.

7.2 Except as otherwise stated in the Purchase Order or agreed in writing by the parties, the Supplier shall be responsible for the payment of all freight, package, handling, insurance, taxes, duties and charges payable with respect to the Goods and the Purchase Order price shall be deemed to be inclusive of all such costs, taxes, duties and charges.

7.3 Except as otherwise specified in the Purchase Order, PAYO shall pay, within 30 days of the end of the month in which the Supplier's tax invoice is received, the amount which is correctly invoiced provided:

(a) the relevant Goods and/or Services have been received or performed in accordance with the Agreement; and

(b) the invoice bears the Purchase Order number and a description of the Goods and/or Services provided.

8. Indemnity and insurance

8.1 The Supplier indemnifies PAYO against all actions, claims, liabilities, expenses, losses, damages and costs (including but not limited to legal costs) and 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 any breach of this Agreement except to the extent that any negligent act or omission of PAYO contributes to the loss or damage.

8.2 The Supplier must:

(a) maintain at its expense public and product liability insurance (in the amount of not less than \$20,000,000 per claim) product liability and other reasonably required insurances having due regard to the nature of its business and the obligations to supply the Goods and/or Services under the Purchase Order and provide evidence of such insurances to PAYO if requested, and

(b) ensure that every permitted subcontractor engaged by the Supplier is insured to the same extent as the obligation on the Supplier in clause 8.2(a).

9. Suspension and termination

9.1 PAYO may at any time by written notice suspend all or part of the Purchase Order for any reason

whatsoever. The Supplier must cease work according to the notice of suspension upon receipt of the notice.

- 9.2 The Supplier must resume the work under the Purchase Order promptly upon any notice by PAYO that the suspension is to cease.
- 9.3 In the event of a breach by the Supplier of any material term or condition of the Agreement which is not capable of remedy or is not remedied within seven (7) days of PAYO notifying the Supplier of any such breach, PAYO may terminate the Purchase Order in whole or part by written notice to the Supplier. For the purposes of this clause 9.3, a failure to perform any obligation by the time stipulated in the Purchase Order is deemed to be a breach of a material term or condition of the Agreement.
- 9.4 PAYO may terminate this Agreement by written notice to the Supplier if the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupt, wound up, under voluntary liquidation or subject to the control of a receiver or receiver and manager.
- 9.5 Notwithstanding any other provision of this Agreement, PAYO may terminate the Purchase Order at any time.
- 9.6 In the event of suspension under clause 9.1 or termination under clause 9.5 the Supplier shall:
- (a) where PAYO has not yet paid the Supplier, be entitled to payment by PAYO for any reasonable costs actually incurred by the Supplier as a direct result of the suspension or termination up to the date the suspension ceased or the date of termination, provided the Supplier provides adequate evidence of its costs to PAYO; and
 - (b) where PAYO has paid the Supplier, reimburse PAYO for the Goods and/or Services not yet delivered or supplied to PAYO, within 14 days of termination.
- 9.7 Termination of the Purchase Order will operate to terminate the Agreement, except in relation to the provisions referred to in clause 10.7 which are expressed to survive termination.

10. General

- 10.1 A party may only use the Confidential Information of the other for the purpose of the supply of the Goods and/or Services under the Purchase Order. Subject to clause 10.2, a party must not disclose any Confidential Information to any third party without the prior written consent of the other party.
- 10.2 The Supplier acknowledges that if the Services relate to the provision by the Supplier of services to the public on behalf of PAYO, then PAYO may be required to provide information about the Services to a third party in accordance with the Government Information (Public Access) Act 2009 (NSW) (the "Act"). Subject to the exceptions in section 121(2) of the Act, the Supplier must, within 7 days of receiving a written request by PAYO, provide PAYO with immediate access to the following information contained in records held by the Supplier:
- (a) information that relates directly to the performance of the Services by the Supplier;
 - (b) information collected by the Supplier from members of the public to whom it provides the Services; and

(b) information received by the Supplier from PAYO to enable it to provide the Services. The Supplier must provide copies of the information to which PAYO has access under this clause 10.2, at the Supplier's cost. PAYO will take reasonably practicable steps to consult with the Supplier before providing any person with information relating to the Agreement. A breach of this clause 10.2 by the Supplier will be considered a breach of a material term and PAYO may terminate the Agreement in accordance with clause 9.3.

10.3 Any notice to be given by one party to the other under this Agreement must be in writing and sent to the other party at the address set out in the Purchase Order.

10.4 This Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

10.5 Except where the parties have entered into a written contract of the kind referred to in clause 2.2(a) of these Terms and Conditions, the Purchase Order and these Terms and Conditions constitute the entire agreement between the parties with respect to its subject matter and supersede all prior agreements and understandings between the parties in connection with it.

10.6 Any provision of this Agreement or a right created under it may not be waived or varied except in writing signed by the party intended to be bound. A failure of a party to exercise a right arising under this Agreement does not constitute a waiver of that right.

10.7 If required to deliver or provide any Goods and/or Services within any lands or buildings owned or occupied by PAYO, the Supplier must observe and comply with applicable rules, policies and reasonable directions of PAYO staff.

10.8 The warranties in clause 4.1 and the provisions of clause 5, 8, 10.1 and 10.2 survive the termination of the Agreement.