

## TERMS OF TRADE POLICY

<b>Section</b>	Finance
<b>Contact</b>	Chief Financial Officer
<b>Last Review</b>	May 2022
<b>Next Review</b>	May 2028
<b>Approval</b>	SLT 22/06/69

### Purpose:

To ensure appropriate and consistent terms of trade are available to customers of Massey University (the University).

This policy will apply to the provision of all goods and services provided by the University, except goods and services provided to student debtors, or to Contract Research clients for which other contractual provisions apply.

### Policy:

Terms of Trade have been drafted for the provision of all goods and services (Massey University Terms of Trade). Provision of all goods and services to customers must comply with the provisions laid out in this document.

Details of the University's terms of trade must be made available to the customers, either in hard copy or electronically, prior to the customer entering into a contract to purchase goods or services.

All quotations must include a copy of the Massey University Terms of Trade.

All invoices must include reference to the Massey University Terms of Trade.

### Payment Terms

All payments, where a credit facility has been established with the University, are due in full on 20<sup>th</sup> day of the month following the date of the invoice. If a credit facility has not been established, payment must be upon receipt of the goods or service. Any exception to these payment terms must be approved by the Chief Financial Officer in advance of any contract being signed.

### Audience:

All staff

### Relevant Legislation:

Consumer Guarantees Act 1993

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**Related Procedures and Documents:**

Massey University Terms of Trade

**Document Management Control:**

Prepared by: Chief Financial Officer

Approved by: SLT 22/06/69

Date Issued: May 2022

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## TERMS OF TRADE MASSEY UNIVERSITY

The terms of trade set out below, together with any quotation (the "contract"), govern the supply of all products and services ("deliverables") supplied by MASSEY UNIVERSITY to you ("customer/s") and represent all of the terms and conditions that govern the supply of the deliverables, and supersede all previous agreements, communications, arrangements and understandings between the parties (whether written or oral) relating to the deliverables. Your acceptance of any quotations or deliverables from Massey University is deemed to be acceptance of these Terms of Trade.

1. Quotations. Any quotation is based on an interpretation of the customer's written and verbal instructions. By accepting a quotation, the Customer confirms it has carefully checked the details in the quotation and agrees that they are correct.
2. Supplied materials: Massey University accepts no liability whatsoever and howsoever for errors or omissions resulting from any materials or information supplied by the customer.
3. Variations/Alterations: Specifications are listed clearly on the quotation forms. Any variation to the deliverables must be agreed in writing by the parties. Unless any such variation records any agreed revised charge or price, Massey University may charge the Customer to reflect any additional work at its standard charge out rates current at the time.
4. Acceptance of Quotation: Any quotation will lapse if not accepted within 30 days.
5. GST: All quotations are exclusive of GST and any other taxes and duties charged or levied in connection with the supply of deliverables. GST and all such other taxes and duties will be charged to, and borne by, the customer.
6. Payment: Payment is due prior to the supply of the deliverables unless a credit facility has been established or as otherwise specified in a quotation (which may require alternative payment arrangements, such as a deposit or full payment in advance). A surcharge of 2% may be charged for payments made by credit card. If a credit facility has been established, and unless otherwise agreed in writing, payment is due in full on or before the 20<sup>th</sup> of the month following the date of a valid tax invoice. The customer shall not be entitled to withhold payment by reason of any claim to a counterclaim or set off whether legal or equitable. Massey University may require payments against work completed and value of materials to hand up to 90% of the quoted price - details of any required payment instalments will be set out in the quotation.
7. Proof Approval: Massey University is not liable for errors in the finished work where a proof has been submitted and approved by the customer.
8. Delivery: Any freight costs incurred by Massey University will be charged to the customer in addition to the charges detailed in the quotation unless the charges are expressly noted to include freight costs in the quotation. The method of transport used for delivery will be notified by Massey University unless specified in the quotation.
9. Title and Risk: Massey University warrants that it has title to any goods provided as deliverables ("goods"). Massey University shall retain title to the goods until all amounts owing to Massey University by the customer in respect of the goods are paid in full. Title in the goods will only pass to the customer once payment for such goods has been made in full, unless payment is made in full before delivery in which case title will pass to the customer upon delivery. Risk in the goods passes to the customer on delivery. Goods are deemed to be delivered when they arrive at the customer's address (as specified in the quotation) or, if the goods are collected by the customer (or a carrier engaged by the customer) from Massey University, when collected. Massey University will use its reasonable endeavours to provide the deliverables on time with reasonable care and skill and materially in accordance with any specifications set out in the quotation but will not be liable to the customer for any loss or damage whatsoever and howsoever caused arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle the customer to cancel this contract.
10. Claims: The customer agrees to inspect any goods and advise Massey University of any problems with the deliverables, within 48 hours of delivery.
11. Illegal or Defamatory Material: Massey University is not required to reproduce any material that is, in its opinion, illegal or defamatory in nature, or that is a breach of any statute. Massey University will be indemnified by the customer in respect of any and all claims, costs and/or expenses arising out of any defamation or any breach of statute or third-party rights (including infringement of copyright, patent or design) arising from materials supplied by the customer.
12. Limitation on Liability: If the customer is not a consumer as defined in the Consumer Guarantees Act 1993 ("CGA") or the customer acquires or holds itself out as acquiring the deliverables for the purposes of a business, nothing in the CGA will apply to the supply of the deliverables. In the case of any other customer the provisions of this contract will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA. Massey University's liability for the supply of deliverables is limited to the quoted price of the deliverables. Massey University and its employees, contractors, or agents' liability for any loss or damage of any kind howsoever and whatsoever caused under or in connection with the contract is limited to the quoted price of the deliverables. To the extent permitted by law, no guarantee is given that the goods supplied are fit for any purpose. Massey University shall not be responsible for any loss or damage resulting from any industrial dispute, accidents, acts of God, equipment failure or intentional damage or any other cause beyond Massey University's reasonable control.
13. Security Interest: The customer grants Massey University a security interest in the goods (and any proceeds of the goods) as security for all amounts owing by the customer to Massey University under this contract or under any other agreement. The customer waives any right it may have to receive from Massey University a copy of any financing statement or verification statement that is registered, issued or received in relation to any goods supplied under this contract. The customer will do all things reasonably requested by Massey University for Massey University to perfect its security interest as a purchase money security interest in the goods including, if applicable, to register a financing statement on the Personal Property Securities Register. The customer waives any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the Personal Property Securities Act 1999.
- 14 Non-payment: Interest shall accrue on any unpaid amounts due and payable at the rate of 1.5 per cent per month. In addition, Massey University shall be entitled to recover any reasonable costs including legal costs in the recovery of amounts owing to Massey University.
15. Intellectual Property. All intellectual property owned by either party and developed independently from this contract by a party shall remain the exclusive property of that party. Any intellectual property created by Massey University in

connection with this contract shall be owned by Massey University. The customer grants Massey University a licence to use the customer's intellectual property for the purposes of fulfilling its obligations under this contract.

16. Health and Safety: Each party acknowledges its obligations under the Health and Safety at Work Act 2015. To the extent Massey University and the customer have overlapping health and safety duties, the parties will consult, co-operate and co-ordinate their activities so far as reasonably practicable. When accessing Massey University's premises, the customer will comply with Massey University's policies and procedures and reasonable directions notified to the customer from time to time, including in relation to health and safety, security and building access.

17. Termination: Either party (Party A) may terminate the contract immediately by notice to the other party (Party B), and may cancel any outstanding provision of deliverables, if Party B: (a) is in breach of the contract, and that breach is either not capable of remedy or has not been remedied within 10 days of notice of the breach; or (b) is or becomes insolvent or bankrupt, goes into receivership or liquidation, or suffers any analogous event; or (c) assigns or novates its rights and obligations under the contract (including by way of a change of corporate control) without Party A's consent.

Either party may terminate the contract for any reason on one month's written notice to the other party. If the customer elects to terminate the contract under this clause 17, the customer must pay Massey University for any costs incurred by Massey University prior to termination in connection with the supply of the deliverables including, to avoid doubt, amounts committed to third parties.

18. Dispute Resolution: Any dispute between the parties must first be discussed between them in an attempt to resolve the

dispute by negotiation. In the event that resolution of the dispute by negotiation is not possible, either party may initiate mediation by giving written notice to the other party. The parties will agree on a suitable person to act as mediator within seven (7) days or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. If the mediation fails then either party may initiate arbitration by giving written notice to the other party with a single arbitrator to be agreed by the parties or failing agreement, by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc. This dispute resolution procedure shall not preclude Massey University at its election, seeking summary judgement for any unpaid amounts due and payable or seeking urgent interlocutory relief before a court.

19: Privacy: Personal information may be collected, stored, and used by Massey University in accordance with the Privacy Act 2020 and Massey University's privacy notice available, as at the date of these Terms of Trade on [www.massey.ac.nz/massey/privacy.cfm](http://www.massey.ac.nz/massey/privacy.cfm).

20. General: Massey University reserves the right to change these Terms of Trade from time to time. The updated Terms of Trade will take effect from the date on which Massey University gives notice to the customer of such change in respect of any quotations accepted after the date of that notice. The remedies provided in this contract are cumulative and additional to any other remedies provided at law. A waiver of any right under this contract is ineffective unless it is in writing and signed by that party. If any provision of this contract is illegal, invalid, or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable

21. Governing law: this contract is governed by New Zealand law.