

JAMES COOK UNIVERSITY

SURPLUS ASSET DISPOSAL TERMS AND CONDITIONS

PARTIES

1. These Terms and Conditions govern:
 - (a) the Recipient's use of the Website and submission of Offers; and
 - (b) the Contract for the Recipient's acquisition of the Equipment from JCU formed under condition 19.

APPLICATION, DEFINITIONS AND INTERPRETATION

Application

2. In submitting an Offer, the Recipient agrees to be bound by these Terms and Conditions.
3. These Terms and Conditions apply equally to a proposed:
 - (a) sale of Equipment to the Recipient; and
 - (b) disposal of Equipment by way of Donation.
4. The Offer comprises the following parts which, in the event of any inconsistencies, shall be construed in the following order of precedence:
 - (a) these Terms and Conditions; and
 - (b) the Bid Form.

Definitions

5. In these Terms and Conditions, the following definitions apply:

Acceptance means written notice to the Recipient from JCU accepting the Offer. For the avoidance of doubt the Acceptance is not an email from JCU acknowledging receipt of the Offer.

Bid Form means the electronic form that is available on the Website and is used to submit an Offer.

Business Day means a day which is not a Saturday or a Sunday or a public holiday in Townsville, Queensland.

Closing Date means the date nominated on the Website as the last date that JCU will accept Offers in relation to a particular piece of Equipment.

Collection Date means the date notified to the Recipient for collection of the Equipment and, if that date is not a Business Day, then the Collection Date will be the first Business Day following the date originally nominated.

Collection Location means the location nominated for the collection of the Equipment, or as otherwise agreed by JCU and the Recipient.

Date for Payment means 14 days from the date of delivery of a Tax Invoice by JCU to the Recipient in respect of the Equipment or 5 Business Days before the Collection Date whichever is the earlier.

Date of Offer means the date that the Bid Form that is completed by the Recipient is submitted through the Website.

Donation means the transfer of Equipment from JCU to the Recipient without financial consideration.

Equipment means the equipment made available by JCU which is the subject of the Offer by a Recipient, and is more particularly described on the Website under a heading to the effect of 'Item Details'.

GST has the meaning given in GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

JCU means the James Cook University, a statutory corporation created under the *James Cook University Act 1997*.

Offer means the offer by a Recipient to purchase or receive the Equipment made in accordance with these Terms and Conditions.

Offer Period means a period commencing on the Date of Offer and ending on the date that is 30 days from (but not including) the Closing Date.

Operating Instructions any operating instructions, manuals or user guides in respect of the Equipment

Party means either the Recipient, or JCU as appropriate, and a reference to **Parties** shall be a reference to all of them.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

Price means the price which the Recipient offers to pay for the Equipment.

Recipient means the party who makes an Offer to acquire Equipment (including for no consideration), or receives Equipment in the form of a Donation who, in the case of an individual, must be at least 18 years old.

Tax Invoice has the meaning given in GST Law.

Terms and Conditions means these terms and conditions.

6. References to a Party include references to that Party's officers, employees or agents.

MAKING AN OFFER

Format of Offer

7. An Offer must be made on the Bid Form and submitted through the Website.

Information to be included in an Offer

8. Each Bid Form must include the following information:
 - (a) the Price (in Australian currency and exclusive of any GST, taxes or duty) that the Recipient proposes to pay for the Equipment, or a statement to the effect that the Recipient proposes not to pay a price for the Equipment;
 - (b) the Recipient's full name and address which:
 - (i) where the Recipient is a company, must include the ACN, registered office, name and job description of the person submitting the Offer;
 - (ii) where the Recipient is a trust, must include the full name and address of each trustee of the trust;
 - (iii) where the Recipient is a public sector agency, must include the name and title of the person submitting the Offer on behalf of the agency; and
 - (iv) in the case of joint Offers (including partnerships), means the full name and address for each person or entity comprising the Recipient;
 - (c) the active Australian Business Number (ABN) of the Recipient (if applicable); and
 - (d) the email address for receipt of notices in respect of the Offer.

Recipient's responsibilities

9. It is the responsibility of each Recipient to:
 - (a) read and familiarise itself with the contents of the Terms and Conditions;

JAMES COOK UNIVERSITY

- (b) carry out its own investigation as to the feasibility of its Offer and to rely on that investigation; and
 - (c) pay its own costs of investigating, preparing and lodging an Offer.
10. Any Recipient expending money, making commitments or incurring liabilities in relation to any Offer does so at its own risk and expense.
11. A Recipient may not claim from JCU any expenses or additional time to make an Offer on the grounds that insufficient or ambiguous information was given on the Website.
12. JCU reserves the right to change the Terms and Conditions at any time and it is the responsibility of each Recipient to regularly check the Website for any changes to the Terms and Conditions. JCU does not accept any responsibility for Recipients not being aware of any changes to the Terms and Conditions.

Non-conforming offers

13. Failure to comply with all or any of the requirements of the Terms and Conditions may result in an Offer being considered non-conforming.
14. JCU may for any reason decline to consider any non-conforming Offers.

Conduct

15. A person must not give or offer to JCU, including a parent, spouse, child or associate of the officer or employee, as an inducement, gift or reward which could in any way tend to influence JCU's actions in relation to any offer.
16. There must be no collusion between any persons making an Offer.
17. If JCU discovers that there has been a breach of clauses 15 or 16, JCU may not consider that Offer.

CONTRACT REGARDING SALE OR DONATION OF EQUIPMENT

18. The Offer shall remain open for acceptance until the later of:
- (a) expiry of the Offer Period; and
 - (b) such time as JCU receives notice in writing from the Recipient revoking the Offer.
19. The Recipient acknowledges that upon Acceptance of the Offer:
- (a) the Offer and the Acceptance shall together form the entire agreement between JCU and the Recipient in respect of the disposal of the Equipment (**Contract**) which supersedes all prior agreements, undertakings, offers, negotiations, communications and representations, whether written or oral, between or by them or their employees or agents in respect of the disposal of the Equipment; and
 - (b) the date on which the Acceptance is issued will be taken to be the date of the Contract.

DONATION OF EQUIPMENT

20. JCU may, in its absolute discretion, elect not to charge for the Equipment (which includes accepting an Offer for no consideration). In this case, the Recipient will be deemed to have contracted on the basis of the Terms and Conditions, except conditions 21 to 23 will not apply to the transaction, and the Recipient agrees to receive the Equipment on the date the Recipient is notified it will receive the donation of the Equipment.
21. Where no financial consideration is paid for Equipment, the Parties agree that valuable consideration for the disposal of the Equipment has been provided by the Recipient, namely the removal by the Recipient of the Equipment from the Collection Location.

PAYMENT TERMS

22. Following Acceptance, a Tax Invoice will be issued by JCU to the

Recipient describing the Equipment being purchased and the Price payable, including any GST component.

23. The Recipient must pay the Price by the Date for Payment unless otherwise agreed in writing between the Parties.
24. Payment must be made in the manner notified in writing or, failing that, in the manner notified on the Website.

CONDITION AND COLLECTION OF EQUIPMENT

Condition of Equipment

25. The Recipient acknowledges that all Equipment is provided on an "as is where is" basis, and JCU does not provide any warranty and make no representation as to the quantity, quality, fitness for purpose, or condition of the Equipment. Nothing in these Terms and Conditions is to be construed as a warranty or representation that the Equipment is disposed of on a basis other than "as is where is".
26. The Recipient acknowledges and agrees that the Recipient accepts the Equipment relying entirely upon its own independent appraisal and assessment of the Equipment (whether or not the Recipient has inspected the Equipment prior to accepting the Equipment), and not on any statements, representations or warranties by or on behalf of JCU, whether oral or in writing.
27. The Recipient acknowledges that:
- (a) the Equipment may require, without limitation, testing and repairs prior to use;
 - (b) unless the Equipment is supplied with a written notice confirming that it has been tested for electrical safety and that the Equipment was found to be electrically safe, the Recipient is to assume the Equipment has not been tested and where the assumption applies, JCU makes no warranty as to the electrical safety of the Equipment;
 - (c) the Recipient bears all responsibility to ascertain the current condition of the Equipment, and make any necessary repairs to bring the Equipment to good and safe working order; and
 - (d) to the extent permitted by law, the Recipient will have no claim whatsoever against JCU in respect of the quantity, quality, fitness for purpose, or condition of the Equipment.

Collection of Equipment

28. Unless otherwise agreed in writing, the Recipient must collect the Equipment from the Collection Location:
- (a) on the Collection Date; and
 - (b) if JCU notifies the Recipient that the Equipment must be collected within certain hours of the day, the Recipient must collect the Equipment during those hours.
29. At the time of collection of the Equipment the Recipient must provide the JCU with proof of identification in the form of either:
- (a) a current driver's licence; or
 - (b) a current passport,
- to verify their identity.
30. If the Equipment is to be collected by another person on behalf of the Recipient, the Recipient must give notice in writing to JCU not less than 2 Business Days prior to collection stating the name, position and (if different from the Recipient) company or business name of the person to collect the Equipment. At the time of collection of the Equipment the person collecting on behalf of the Recipient must provide JCU with proof of identification in the form of either:
- (a) a current driver's licence; or
 - (b) a current passport, to verify their identity.
31. The Recipient must at all times comply with requirements of JCU as to the use of or access to the Collection Location, and the Recipient has sole responsibility for informing itself of these

JAMES COOK UNIVERSITY

requirements.

Removal of Equipment

32. The Recipient is wholly responsible for the safe collection and removal of the Equipment from the Collection Location, and for providing all labour and mechanical aids necessary to effect the removal.
33. The Recipient must promptly make good any damage caused at or to the Collection Location by the Recipient in collecting and removing the Equipment from the Collection Location, including where the Recipient is required to de-install the Equipment itself. If the Recipient fails to make good the damage JCU may make good the damage and recover the cost of doing so from the Recipient as a debt.
34. The Recipient will be wholly responsible for arranging any export requirements, transport and insurance of Equipment between the Collection Location and the Recipient's destination for the Equipment.
35. The Recipient must comply with all laws in relation to its acquisition of the Equipment.

Title, Risk and Property in the Equipment

36. Title to and Risk in the Equipment will immediately pass to the Recipient:
 - (a) upon payment of the Price by the Recipient; or
 - (b) where no Price is payable, at the time the Equipment is collected and removed from the Collection Location.

INSURANCE, INDEMNITY AND LIABILITY

Indemnity

37. The Recipient will be liable for, and must indemnify and keep indemnified JCU and its respective officers, employees and agents against, any loss of or damage to JCU's property, claims in respect of personal injury or death or loss of or damage to any other property, or other costs or expenses incurred or liabilities suffered by JCU (including the costs of defending any action, claim or demand), arising as a result of:
 - (a) the collection and removal of the Equipment from the Collection Location by the Recipient, including any de-installation of the Equipment by the Recipient;
 - (b) the use by the Recipient or any third party of the Equipment, or the use of the Equipment on any third party, whether or not such use was in accordance with the use to which the Equipment could have been reasonably expected to have been put or otherwise;
 - (c) claims by any third party to whom the Recipient has subsequently disposed of, or licensed or otherwise permitted to use, the Equipment; and
 - (d) any other matter arising out of or as a consequence of the sale or the donation of the Equipment.

Waiver and exclusion of statutory rights

38. The Recipient waives to the fullest extent permitted by law:
 - (a) any cause of action or rights it may have under or in respect of Parts 3 or 4 of the *Fair Trading Act 1989 (Qld)* (or any other legislation which is to any extent similar to such legislation) in any way relating to or incidental to the sale or donation of the Equipment; and
 - (b) any cause of action or rights it may have as a result of any right, duty or liability which may be implied into the transaction by implication of law.
39. The Parties agree that the provisions of:
 - (a) the Vienna Convention on the Sale of Goods, whether implied into the Contract by means of the Sale of Goods (Vienna Convention) Act 1986 (Qld) or otherwise; and
 - (b) the Sale of Goods Act 1896 (Qld), are expressly excluded from the disposal of the Equipment by JCU to

the Recipient.

Operating Instructions

40. The Recipient warrants to JCU that if the Recipient is provided with Operating Instructions by JCU, then JCU will not be liable for any loss or damage to property, injury or death to any person, or any other cost, loss, expense or damage whatsoever as a result of the use by the Recipient of the Equipment in accordance with those Operating Instructions.

Subsequent disposal of the Equipment by the Recipient

41. The Recipient acknowledges and agrees that JCU will bear no responsibility or liability whatsoever for, or arising as a consequence of, any subsequent disposal of the Equipment or part thereof by the Recipient to a third party, whether with or without the knowledge and/or consent of JCU.

Maximum Liability

42. Notwithstanding any other provision of these Terms and Conditions, to the extent permitted by law, the maximum liability of JCU for any and all claims or causes of action in contract, tort (including for negligence) under statute or otherwise, made by the Recipient in connection with the Equipment is \$1.
43. In no circumstances will JCU be liable to the Recipient for any loss of use, production, profit, revenue, business, data, contract or anticipated saving, or any financing costs or increase in operating costs or any other economic, special, indirect or consequential loss or damage arising out of or in connection with the Equipment.

Dispute Resolution

44. For the purpose of condition 45 a dispute will have arisen when either Party gives notice in writing to that effect to the other Party.
45. The Parties agree to work towards settling any dispute as follows:
 - (a) by negotiation Australian dispute Centre at the first instance (to be carried out in good faith); and
 - (b) if an acceptable resolution cannot be achieved within 14 days (or a longer period agreed between the parties) of commencing negotiations, the parties agree to refer the dispute to mediation to be administered by the Australian Disputes Centre (**ADC**); and
 - (c) The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation (**Guidelines**) in force at the date of the Contract. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved, including the parties' respective responsibilities for the payment of the mediator's costs and other costs of the mediation. The Guidelines, including the ADC Mediation Appointment Agreement which is expressly incorporated in the Guidelines, are incorporated into these Terms and Conditions and any Contract.
46. At any time, a Party may, without inconsistency with condition 45 seek urgent interlocutory relief in respect of the subject matter of the dispute from any Court having jurisdiction.

Termination

47. The Recipient acknowledges that if it:
 - (a) fails to comply with any terms or conditions of the Contract;
 - (b) abandons or refuses to proceed with performing the Contract;
 - (c) indicates in any way that it is unwilling or unable to complete the Contract; or
 - (d) becomes insolvent or bankrupt, or enters into or threatens to enter into bankruptcy, liquidation or any other form of insolvency, administration, management or receivership, or scheme or arrangement with creditors,JCU may terminate the Contract immediately by notice in writing

JAMES COOK UNIVERSITY

to the Recipient.

GENERAL

Notices

48. Notices sent under the Contract must be in writing and delivered in person, by email, or by post to the address details of the Party as set out in the Bid Form, or as otherwise notified in writing from time to time by a Party.

Assignment

49. The Recipient may not assign the Contract (in whole or in part) without the prior written consent of JCU.

Applicable Law

50. The transaction will be governed by, and is to be construed in accordance with, the laws of and applicable in Queensland, and the Parties accept the jurisdiction of the courts of Queensland.

Severance

51. If any of the Terms and Conditions are held by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed from the Terms and Conditions, and the remainder of the Terms and Conditions will continue to be effective and valid notwithstanding such severance.

Duty

52. The Recipient is liable for, and must pay, all duty (including any fine or penalty) relating to the transfer of the Equipment. If JCU pays any duty (including any fine or penalty) related to the transfer of the Equipment, the Recipient must pay that amount to JCU as the case may be on demand.

Confidentiality

53. The Offer and Contract, and anything related to the Offer and Contract (**Confidential Information**) must be treated as confidential and the Recipient must not:

- (a) disclose the Confidential Information to any person, firm or company; or
- (b) use the Confidential Information for any advertisement, display or publication,

without the prior written consent of JCU, which may be withheld in the absolute discretion of JCU.

Personal Information

54. Conditions 54 to 57 apply if:

- (a) the Recipient will in any way deal with Personal Information of JCU; or
- (b) the provision of the services under these Terms and Conditions will involve:
 - (i) the transfer of Personal Information to JCU; or
 - (ii) the provision of services to a third party for JCU.

55. The Recipient acknowledges that it is a bound contracted service provider for the purposes of the *Information Privacy Act 2009* (Qld).

56. The Recipient must:

- (a) comply with parts 2 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) as if the Recipient was JCU, as the case may be;
- (b) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information, unless required or authorised by law;
- (d) not disclose Personal Information without the prior written consent of JCU, as the case may be, unless required or authorised by law;

- (e) not transfer any Personal Information outside of Australia without the prior written consent of JCU, as the case may be;
- (f) ensure that access to Personal Information is restricted to those of its employees and officers who require access;
- (g) ensure that its officers, employees and sub-contractors comply with the same obligations imposed on the Recipient under this condition 56
- (h) fully cooperate with JCU, as appropriate, to enable that party to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (i) immediately notify JCU, as the case may be, if the Recipient becomes aware that a disclosure of Personal Information is or may be required or authorised by law; and
- (j) comply with such other privacy and security measures as JCU reasonably advises the Recipient in writing from time to time.

57. The Recipient must immediately notify JCU upon becoming aware of a breach of condition 56.