

"THIS POLICY IS IN THE PROCESS OF BEING REVIEWED."



**VICTORIA
UNIVERSITY**

**A NEW
SCHOOL OF
THOUGHT**

POLICIES AND ASSOCIATED PROCEDURES

POLICY NUMBER:	POF051031000
POLICY NAME:	Contracts Policy
DATE APPROVED:	12 December 2005
POLICY TYPE AND CATEGORY:	General (Resourcing and Finances)
RESPONSIBLE OFFICER:	General Counsel
POLICY ADVISOR:	Senior Lawyer

1.0 PURPOSE

The purpose of this policy is to:

- Reduce legal and commercial risk.
- Provide procedures and guidelines to assist in the negotiation and execution of Contracts.
- Maximise efficiencies across the University and the utilisation of legal expertise.
- Minimise duplication and cost.
- Promote a culture of compliance with the University's contracting requirements and procedures.

2.0 SCOPE

This policy applies to all Contracts entered into by or on behalf of Victoria University and to all variations to such Contracts.

3.0 BACKGROUND

The University has identified a lack of clear guidelines and procedures for employees to follow when negotiating and entering into Contracts on the University's behalf. This policy is intended to rectify this by clarifying the roles, responsibilities and accountabilities for such Contracts.

4.0 DEFINITIONS

"Contracts" means all contracts, agreements, deeds, arrangements, promises or understandings with other parties (including leases, property licences, software licences, database licences as well as memorandums of understanding (MOUs), letters of intent and heads of agreement which, despite the University's intentions, may be legally binding). The form of a Contract may vary. For example, it may be by way of a formal agreement, a letter, e-mail, a purchase or work order, or an oral agreement. A deed is a written Contract which is executed under seal and which is intended and expressed to operate as a deed. Deeds are often used where there is no consideration being provided by one party for the other party to assume an obligation; generally speaking, such obligation will only be enforceable if it is in a deed, rather than in a simple Contract. Deeds are also required to be used in Victoria for conveyances of land.

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"Conflict of Interest" means a circumstance where an employee's relationship with a (potential) counterparty is, or may be perceived as, contrary to the interests of the University (eg. where that relationship may influence an employee's judgment in engaging a contractor).

"Counterparty" means the other party to a Contract.

"Principal Officer" means those persons holding the positions (whether substantive or acting) of Vice-Chancellor, Deputy Vice-Chancellor, Pro Vice-Chancellor or Executive Director.

"Purchase Contract" means a Contract for the purchase, hire or lease of goods or services by the University.

"Standard Contract" means Contracts which the Legal Services Department has approved for ongoing use by a department or area within the University. A list of current Standard Contracts is available from the Legal Services Department.

5.0 KEY WORDS

Contract, agreement, letter of intent, memorandum of understanding, deed, undertaking, commitment, negotiating, standard contract, Principal Officer, Request for Execution of Document.

6.0 POLICY

It is the policy of Victoria University at all times to:

- conduct transactions on an arms length basis;
- act in good faith in the negotiation and administration of all Contracts;
- avoid any Conflict of Interest;
- avoid Contracts which are not in the University's best interests or which could adversely impact upon the operations or integrity of Victoria University; and
- avoid disputes with counterparties which could adversely impact upon the operations, reputation and/or integrity of Victoria University.

The nature and terms of the many Contracts entered into by the University will vary substantially according to the particular circumstances of each negotiation. Nevertheless, all Contracts entered into by Victoria University should be:

- legally, operationally and commercially acceptable;
- clearly, adequately and concisely documented;
- broadly consistent across Victoria University;
- compatible with the terms of Victoria University's insurances and financial instruments; and
- consistent with the policies and procedures outlined in this document.

Victoria University has a number of approved Standard Contracts created for use by University departments and areas. These Standard Contracts are an important element in managing legal risks associated with contracting. If Victoria University is providing a Contract to a counterparty:

- A Standard Contract must be provided to the counterparty as the initial position.
- If there is no Standard Contract available, the Legal Services Department should be consulted regarding the appropriate Contract to be drafted and provided to the counterparty.
- Any changes to a Standard Contract must be approved by the Legal Services Department.

If the counterparty is providing a Contract to the University, such Contract must be approved in accordance with the procedures set out in section 7 below.

If there is any possibility that a proposed Contract will require input, advice or approval from the Legal Services Department, consultation with the Legal Services Department must occur in the early stages of negotiation of the Contract so as to protect the University's bargaining position. Similarly, if the proposed Contract requires the involvement of another organisational unit of the University (eg. to deliver services) such unit must be consulted at an early stage to ensure they can in fact be so involved. In particular:

- any proposed Contract (including any MOU or letter of intent) with an offshore agent,

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- government agency or institution must be reviewed and negotiated by VU International (in cooperation with the relevant Faculty or School) and then submitted to the Pro Vice-Chancellor (International) for approval; and
- any proposed research Contract must be reviewed and negotiated by the Office of Industry and Research and then submitted to the Pro Vice-Chancellor (Industry, Research and Region) for approval.

All University employees should respond promptly to requests for input, advice and approval of a Contract so as to preserve and promote the University's ability to take advantage of opportunities as they arise.

7.0 PROCEDURES

7.1 Negotiation and Execution of Contracts

The following procedures must be followed by University employees who are authorised to negotiate Contracts when negotiating, executing and/or managing any Contract (including any MOU, Heads of Agreement or letter of intent) on behalf of the University.

Negotiating Contracts

1. It is essential that the counterparty has a proper legal identity so that VU can take all necessary actions against such counterparty (including the recovery of any monies owed under the Contract). This identity is clear where the counterparty is an individual, however, where the counterparty purports to be an organisation (such as a company or an association) searches must be carried out to confirm such counterparty's proper existence. The Legal Services Department can carry out such searches for you.
2. When negotiating any Contract:
 - (a) the counterparty must be advised that the University will not be bound by any draft Contract unless and until it is formally executed by a duly authorised VU officer (ie. in accordance with this section 7). Such counterparty must not be given any impression that the VU officer's execution of the Contract is a formality or a foregone conclusion; and
 - (b) advice must immediately be sought from the Legal Services Department if:
 - (i) there is any uncertainty, ambiguity or confusion as to a term of the Contract or the University's rights and obligations under the Contract; or
 - (ii) the Contract appears to impose any excessive, unclear or uncertain liability on the University.

Authority to enter Contracts

3. Purchase Contracts may only be entered into in accordance with the University's Purchasing Policy – FU05 and Financial Delegations Policy – FU 07. In particular, a VU officer may only enter into a Purchase Contract if the value of such Contract is within his or her financial delegation. However, if such Purchase Contract is in the form of a deed it may only be executed by a Principal Officer.
4. Contracts, other than Purchase Contracts, which involve the University paying or receiving any payment from, a counterparty, may only be entered into by a VU officer if the value of such Contract is within the monetary limit set for such VU officer by the Accounts Receivable Invoice and Credit Note Authorisation Schedule in the Debtors Management Policy.
5. Contracts, other than Purchase Contracts, which do not involve the University paying, or receiving any payment from, a counterparty, may only be entered into by a Principal Officer or a VU officer who has been specifically authorised by a Principal Officer to enter such Contract.

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Execution of Contracts

6. All requests to a Principal Officer for execution of any Contract on behalf of the University must be accompanied by a Request for Execution of Document form (see [Appendix A](#)). This form enables Principal Officers to gain a better and quicker understanding of the nature of the document which they are being requested to sign.
7. Contracts must not be executed until all necessary details in such Contracts are completed, including attachments and the contents of Schedules. Contracts must also be dated at the time of execution.
8. Once a Contract has been executed by the University and the counterparty/parties, one of the original versions of such Contract must be forwarded to the Chancellery Support Unit for registration and safe-keeping (after retaining a copy for your own files).
9. No business is to be commenced or services provided until the Contract has been entered into in accordance with this policy.
10. Care must be taken following execution of a Contract to ascertain whether stamp duty is payable on the Contract (and if so ensure that stamping proceeds) and whether the executed Contract is required to be registered with a relevant regulatory entity (eg. certain leases or charges).

A flow chart in respect of the key stages in the negotiation and execution of a Contract is attached as [Appendix B](#).

7.2 Contract Disputes and Claims

All contractual disputes or claims by or against Victoria University must be immediately notified to the relevant manager and the Legal Services Department. Similarly, all decisions to commence or defend legal proceedings on such matters must have the prior approval of the relevant manager and the Legal Services Department.

7.3 Conflict of Interest

University employees must not be involved in Contract negotiations with any counterparty where a Conflict of Interest, real or perceived, may exist.

If a University employee is confronted with a decision where a Conflict of Interest may exist with a counterparty, s/he must advise his/her supervisor of the conflict and take no further part in the transaction. Supervisors are to allocate the Contract negotiation to another employee in such circumstances.

Examples of Conflicts of Interest include, but are not limited to:

- a Contract between the University and a member of the employee's family or close friend or associate;
- an employee being a director, officer, employee, agent, partner, associate, trustee or consultant to an entity which enters into a Contract with the University; or
- accepting gifts, entertainment, discounts or other favours from any individual or entity that is seeking to do business with the University.

8.0 SPECIFIC ISSUES RELATING TO CONTRACT TERMS

8.1 Intellectual Property/Confidential Information

When tendering, negotiating or performing a Contract, care must be taken to protect Victoria University's confidential information and intellectual property rights. In particular, if the proposed Contract restricts Victoria University's right to disclose or use information:

- such restrictions must be approved by the IP Officer and the Legal Services Department; and

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- such restrictions must not unacceptably restrict Victoria University's future activities, or conflict with pre-existing undertakings given by the University.

8.2 Compliance with laws

Care must be taken to ensure that Victoria University and the relevant counterparty(s) comply with all relevant laws, including those relating to privacy, equal opportunity, trade practices, OH&S, consumer protection and the environment. The Legal Services Department will be happy to assist you with any queries you may have regarding such laws.

8.3 Taxation

Contracts should specify which party is to be responsible for taxes and duties (eg. stamp duty, GST, royalty or withholding tax).

Adequate provision should be made for GST, particularly where Victoria University is to make supplies under the Contract (as the supplier is liable for GST). Considerable care is required, as the GST ramifications of particular clauses or arrangements vary according to when the Contract was entered into and the nature of the supply. Particular care must be taken when reviewing:

- Contracts or clauses drafted pre-GST
- Contracts or clauses drafted by other parties
- variations/additions to Contracts, particularly if drafted pre-GST.

VU's GST Policy – FU12 sets out a standard GST clause to be included in relevant Contracts.

8.4 Liability

Terms imposing liability on the University (including indemnities, guarantees, warranties and representations) must be negotiated with considerable care and with the assistance and approval of the Legal Services Department as they can generate significant liabilities for the University, which are often unanticipated at the time of negotiation.

VU should also seek relevant indemnities, warranties and limitations of its liability from the counterparty; please contact the Legal Services Department for assistance in this regard.

8.5 Insurance

Careful consideration should be given as to whether VU should require the counterparty to have particular insurance(s) and as to the amount of such insurance(s). For example, if the proposed Contract envisages the counterparty providing:

- services on VU property, workers compensation insurance and public liability insurance up to \$10 million should be required; and/or
- professional advice, professional liability insurance should be required.

The Legal Services Department can assist you to decide whether any insurances are required.

If insurance is required and such requirement is inserted in the Contract, copies of the certificates of currency for such insurance must be obtained from the counterparty prior to the Contract being executed and at annual intervals following such execution.

On the other hand, if the counterparty demands that the Contract contain a clause requiring Victoria University to effect any particular insurance(s), VU's Team Leader – Insurance & Assets, Finance Department should be consulted to determine whether Victoria University holds such insurance(s) and, if not, whether it is feasible for Victoria University to obtain such insurance.

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8.5 OH&S: Work on University premises

Contractors and their personnel who perform work at any University premises must undertake the University's OH&S induction procedures.

9.0 RELATED POLICIES

Purchasing Policy – FU05
Financial Delegation Policy – FU07
Independent Contractors Policy
GST Policy – FU12
Staff Code of Conduct
Debtors Management Policy – FU02

10.0 CONSULTATION

Following consultation with the Deputy Vice-Chancellor (Management Services), the draft policy was presented to VCAC (Services) for circulation to the University community. A consultation process then followed and appropriate amendments were subsequently made to the policy.

11.1 REVIEW

This policy should be reviewed every 3 years from the date it is approved.

12.0 ACCOUNTABILITIES

12.1 Responsibility

Legal Services Department

12.2 Implementation Plan

Implementation of policy immediately upon approval. The policy will then be posted on the University's policy register and a global email will be sent to the University community advising them of the policy's approval.

12.3 Compliance

This Policy is issued with the authority of VU's Council. Compliance with this policy is mandatory. Any breach of or failure to comply with this policy should be immediately reported to the relevant Principal Officer. Such breach/failure may lead to disciplinary action and/or withdrawal of Contract approval rights.

12.4 Effectiveness of This Policy

To be monitored by Principal Officers and other managers responsible for employees having authority under this policy to enter into Contracts on the University's behalf.

13.0 GENERAL

- (a) If you have any enquiries of a legal nature in relation to any tender, contractual negotiations or the performance of any Contract or if you require the creation of a Standard Contract for ongoing use by your department, please contact the Legal Services Department.
- (b) The Legal Services Department must be consulted before briefing external lawyers, except where retainer arrangements have been agreed with the Legal Services Department (including ongoing retainer arrangements for routine or repeated matters).
- (c) Any enquiries of any insurance nature should be made to Victoria University's Team Leader – Insurance and Assets, Finance Department.

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- (d) The requirements of this policy may only be waived by the written approval of Legal Services Department.

Appendix A: Request for Execution of Document Form

To access a word copy of this memorandum [click here](#)

MEMORANDUM

To: **[insert name of Principal Officer]**

From:

Date: 200_

Subject: Request for Execution of Document

I attach:

1. a document (in **[duplicate]**/**[triplicate]**) between Victoria University and **[insert name of other party/parties]** regarding **[insert description of document]** (the *Document*); and
2. a completed Request for Execution of Document Form.

I certify that:

- (a) I have personally reviewed the entire Document and its subject matter and the University's Contracts Policy;
- (b) Victoria University's interests are properly promoted and safeguarded by the Document, taking into account the relative bargaining positions of the parties and the anticipated gains for Victoria University;
- (c) I have made inquiries of all relevant University units that may be involved in the performance of the Document and I am satisfied that Victoria University has full capacity to perform all obligations imposed on it by the Document. In particular, if the Document imposes any requirements on the manner in which funds are held, how transactions are made or if it requires the provision of financial reports or the undertaking of audits, I have obtained the approval of Victoria University's Director of Finance to such requirements;
- (d) I have made inquiries as to the identity of the counterparty/parties to the Document and:
[Delete the paragraph(s) below which may be inapplicable]
 - (i) I am satisfied that such counterparty/parties is not an employee/s of Victoria University or owned or controlled by an employee of Victoria University; and
 - (ii) as far as I am aware, such counterparty/parties is not:
 - a. an ex-employee of Victoria University or a relative or spouse of an employee or ex-employee of Victoria University; or
 - b. owned or controlled by an employee or ex-employee of Victoria University or a relative or spouse of an employee or ex-employee; **[OR]**
 - (iii) my inquiries have revealed that _____ **[insert name]** (who is _____) **[explain relationship between this persons and Victoria University; eg. ex-employee]** is _____
_____ **[explain relationship between this person and counterparty/parties]** however I warrant that no special or preferential treatment has been given to the counterparty/parties either in the selection of such counterparty/parties or in the negotiation of the terms of the document.
- (e) I will take all necessary steps to ensure that the counterparty/parties and Victoria University perform all their obligations promptly and in accordance with the Document; and

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(f) **[Delete following sentence if inapplicable]** I have obtained the approval of _____ **[insert name and title of VU Manager]** to the Document, after having explained it and its effect and consequences to him / her; and

(g) **[Delete the sentence below which is inapplicable]**
I have obtained legal advice regarding the Document.

[OR]
I am satisfied there is no ambiguity or uncertainty in the Document requiring legal advice.

Please arrange for the Document to be properly executed and then return one version to the Chancellery Support Unit and the other version(s) to me for distribution to the counterparty/parties.

Yours sincerely

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REQUEST FOR EXECUTION OF DOCUMENT

1. Parties to document (include ABN/ACN):

2. Description of document (For example, lease, contract for sale of land, supply contract, etc):

3. Term or Duration of document (if any, including commencement and expiration dates and options, where applicable):

4. Consideration or Price payable by VU and/or the counterparty under the document (if any, for example, total rental, sale price, etc)

5. Number of copies to be signed: _____

6. Contract Manager : _____

7. Review Date of document : _____

8. Contract No (if applicable) : _____

9. Related documents / contracts : _____

10. Has an external law firm acted for VU in this matter? Yes/No. If yes, please attach sign-off letter from firm.

11. Approval by Principal Officer: _____

12. Date of Execution: _____

13. Originals provided/returned to: _____

Appendix B: Flow Chart for Negotiation and Execution of Contracts

