

NUS Services Limited

Purchasing consortium rules

1 Contents

1	Introduction.....	2
2	Definitions.....	2
3	Rules.....	4
4	Adherence to Purchasing Consortium DOB recommendations, the Rules and NUSSL promotional/marketing commitments.....	5
5	Central Billing System.....	7
6	Sale of products purchased.....	8
7	Bill Payments System.....	9
8	Resignation from the Purchasing Consortium.....	12

2 Introduction

These rules (“the Rules”) govern the relationship between NUS Services Limited (NUSSL) and Participants of the NUSSL Purchasing Consortium. They also set out the arrangements for the administration of the Central Billing System (“CBS”) administered by NUSSL which services the Consortium. All Participants in the Consortium are required to indicate their agreement to be legally bound by the Rules by completing the signature section on the final page.

3 Definitions

"Bank Account" means the bank account of a Participant, details of which have been separately notified by the Participant to NUSSL;

"CBS" means the Central Billing System administered by NUSSL for the receipt and holding of Participants' monies in relation to payment of the purchase price of goods and/or services purchased by Participants from Suppliers (**"Price"**) and for payment and discharge of the Price;

"Deposit" means the sum of money held by NUSSL on behalf of a Participant.

"Memorandum and Articles of Association" means the memorandum and articles of association of NUSSL;

"NUSSL" means the limited company known as NUS Services Limited registered in England and Wales with company number 01639519 at Ian King House, Snape Road, Macclesfield SK10 2NZ;

"NUSSL Central Billing Account" means a bank account held in trust opened by NUSSL for the purpose of receiving from Participants the Price and transmitting the same to Suppliers in settlement of invoices or priced delivery notes issued to Participants;

"NUSSL Central Billing Deposit Account" means a bank account held in trust opened by NUSSL for the purpose of receiving from Participants and holding the Deposit received from each of the Participants;

"NUSSL Purchasing Consortium" means the Purchasing Consortium of Students Unions and other bodies managed by NUSSL in accordance with the Rules;

"Participant" means a participant of the NUSSL Purchasing Consortium who has agreed to be bound by these Rules;

"Purchasing Consortium DOB" means the NUSSL Purchasing Consortium Direction and Oversight Board

"Suppliers" means such suppliers of goods and/or services to Participants for which NUSSL agrees from time to time to collect and transmit the Price by means of the CBS.

4 Rules

- 4.1 A Participant shall order goods and/or services direct from Suppliers. Invoices or priced delivery notes relating to such orders will be issued to a Participant and copied to NUSSL by Suppliers.
- 4.2 In the event that a Participant disputes any invoice issued to it by a Supplier, the Participant shall notify NUSSL within ten working days of receipt of such invoice that the invoice is disputed by it. All invoices shall be deemed undisputed unless notification of a dispute is given to NUSSL in accordance with this rule 4.1 ("Undisputed Invoice").
- 4.3 Each Participant must resolve disputed invoices with Suppliers directly as soon as reasonably practicable and within 60 days of the invoice being disputed. Each Participant must notify NUSSL of the terms of any resolution in relation to a disputed invoice within three working days of resolution, at which point, the terms agreed between the Supplier and the Participant as part of the resolution shall be treated as an Undisputed Invoice.
- 4.4 Each Participant will permit NUSSL to collect the Price by direct debit in relation to all goods and/or services supplied to it by Suppliers where the invoice has been copied to NUSSL and is an Undisputed Invoice. Each Participant shall keep its Bank Account in sufficient funds to meet all Undisputed Invoices issued to it by a Supplier.
- 4.5 By completing and returning a direct debit authority to NUSSL, each Participant authorises NUSSL to debit its Bank Account by direct debit to the value of all Undisputed Invoices for the credit of the NUSSL Central Billing Account ("Payment").
- 4.6 NUSSL will debit Bank Accounts with Payments and will transmit Payments to Suppliers in settlement of sums due from Participants to Suppliers within two working days of collection of a Payment, or by the date the Price is due to a Supplier, whichever is later. For the avoidance of doubt, NUSSL will not transmit the Price to Suppliers unless it has first collected the relevant Payment.
- 4.7 NUSSL shall at all times maintain such records as may be necessary to show separately in respect of each Participant all dealings with Payments received from a participant and with Deposits.

- 4.8 A Payment held by NUSSL in the NUSSL Central Billing Account shall be held by NUSSL on trust for the relevant Participant for the sole purpose of paying Suppliers' Undisputed Invoices. If such payments are not made by NUSSL in accordance with the terms of these rules NUSSL undertakes to repay to the relevant Participant the amount standing to the credit of the NUSSL Central Billing Account collected from that Participant's Bank Account in accordance with these rules.
- 4.9 In the event that the Participant ceases to be a Participant of CBS, whether pursuant to rule 10 or otherwise, NUSSL undertakes to repay to the relevant Participant the amount standing to the credit of the NUSSL Central Billing Deposit Account paid by that Participant.
- 4.10 If a Participant fails to maintain sufficient funds in its Bank Account to meet the Payments, or revokes its direct debit mandate in relation to Payments NUSSL may take action as set out in these Rules.
- 4.11 Nothing in these Rules is intended to impose liability upon NUSSL for the act or failure to act of a Participant.
- 4.12 NUSSL excludes to the fullest extent permitted by law all and any liability towards a Participant which may arise in relation to the CBS. A Participant shall indemnify NUSSL against all losses, claims, damages and expenses in relation to any liability which NUSSL may incur in relation to the administration of the CBS as a result of an act or omission of such Participant.
- 5 **Adherence to Purchasing Consortium DOB recommendations, the Rules and NUSSL promotional/marketing commitments**
- 5.1 The Purchasing Consortium DOB shall make recommendations in respect of Suppliers and activities in accordance with the following definitions:
- 5.1.1 Compulsory Product Areas: Participants purchasing goods or services of these types will be expected to purchase all or a specified proportion of their needs from the Suppliers selected. Participants who purchase goods in Compulsory Product Areas from non-selected Suppliers will be considered to have breached the Rules unless they have been granted dispensation to purchase elsewhere.

- 5.1.2 Endorsed Deals: Those which the Purchasing Consortium DOB strongly commends to Participants. No disciplinary action will be taken against Participants disregarding these deals, however all Participants purchasing from non-listed suppliers should advise the NUSSL Buyer of those suppliers from whom they are purchasing.
- 5.1.3 Company Promotional Activity: This will generally take the form of an optional scheme which Participants may join. Having so joined, Participants will be made aware of their undertaking and commitment to this scheme and indicate their commitment to these.
- 5.2 The Purchasing Consortium DOB will present their reports so as to clearly delineate the category of recommendation applicable to each supplier and product group.
- 5.3 Participants shall be entitled at meetings of the Purchasing Consortium CEU to establish rules with respect to Compulsory Product Areas and Endorsed Deals.
- 5.4 Participants shall be entitled at meetings of the Purchasing Consortium CEU to establish rules with respect to minimum volume guarantees required of Participants within specific Compulsory Product Areas.
- 5.5 Participants agree to conform to the Rules including any amendments revocations or additions to them as established periodically by the Purchasing Consortium CEU. This will form the basis of contract between the Participant and NUSSL for the period in question.
- 5.6 Non-compliance with the Rules by a Participant shall be investigated by the Purchasing Consortium DOB.
- 5.7 Where, after investigation, a breach of rules has not been resolved then the Purchasing Consortium DOB will consider further action against the Participant concerned.
- 5.8 The Purchasing Consortium DOB will receive reports, consider any representations from the Participant concerned and arrive at a conclusion and advise the Participant of that outcome. The various levels of penalty could include:
 - 5.8.1 No action And/or
 - 5.8.2 Reprimand And/or

5.8.3 Fine And/or

5.8.4 Recommendation to exclude from Purchasing Consortium.

5.9 Fines will be based on a percentage formula and will be based upon:

5.9.1 Financial gain of the Participant concerned

5.9.2 The potential net effect of any breach to the purchasing group as a whole.

5.10 In the event of a decision regarding 5.8 above, the Participant shall have the right of appeal to NUSSL whose decision shall be final.

5.10.1 If the Participant does not exercise this right of appeal, within 7 working days of the date of the decision under 5.8 then the decision will become final and the penalty will be actioned with immediate effect or in the case of a decision under 5.8.4 the Participant will be excluded from the Purchasing Consortium with immediate effect.

5.10.2 If following an appeal by the Participant NUSSL decide to uphold a recommendation to exclude under paragraph 5.8.4, the Participant will be excluded from the Purchasing Consortium with immediate effect.

5.11 Notwithstanding the above, any Participant which commits three breaches within a eighteen month period will be subject to automatic exclusion.

5.12 NUSSL shall not be under any obligation to re-admit any Participant expelled under the Rules, but in the event of doing so, they may require the expelled Participant to:

5.12.1 Provide a written undertaking that they now fully intend to comply with all rules and stipulations and either

5.12.2 Serve a minimum of three years outside the Purchasing Consortium or

5.13 At all times, NUSSL will attempt to deal with these matters as expeditiously as possible and to resolve any difficulties informally but, in the event that this is not possible, will have no hesitation in invoking the procedure outlined above.

6 **Central Billing System**

- 6.1 It shall be a condition of participating in the Purchasing Consortium that Participants register for and participate in a Central Billing System for such product areas as may be determined from time to time by the Purchasing Consortium CEU.
- 6.2 NUSSL may remove from the Consortium any Participant who fails to participate save that:
- 6.2.1 NUSSL may defer such confirmation for a period not exceeding 12 months if they, at their absolute discretion, believe that there are special circumstances preventing a Participant from participating.
- 6.2.2 Participants shall have a right of appeal to NUSSL whose decision shall be final.
- 6.2.3 Each Participant shall be required to sign and return a copy of these Rules as a condition of participating in the Consortium.
- 6.2.4 All Participants are expected at all times to abide by these Rules as amended from time to time by the Purchasing Consortium CEU. A copy of these rules will be permanently available on NUSSL's website and it is the responsibility of each Participant to ensure that they are aware of the contents.
- 7 Sale of products purchased**
- 7.1 Products purchased through the CBS shall only be used for one of the following purposes:
- 7.1.1 to be retailed directly through outlets wholly managed by the Participant, or by a student organisation that is a subsidiary of the Participant,
- 7.1.2 to be resold to another organisation for the sole purpose of sale to the Participant's membership through one or more outlets controlled by that organisation:
- 7.2 No specific approval shall be required for supply of this type to the Participant's parent academic institution or another student organisation within the parent institution
- 7.3 Specific prior approval by NUSSL shall be required for:
- 7.3.1 supply to any other organisation or for any purpose, other than those in 7.1 above

7.3.2 Such approval will only be granted if it conforms to the regulatory framework for such, as approved by NUSSL from time to time

8 **Bill Payments System**

8.1 It is a condition of participation in the Purchasing Consortium that Participants pay their invoices on time by direct debit for all supplies unless they have been specifically disputed.

8.2 Subject to paragraph 8.1 above, in the event that a Participant fails to pay by defaulting on a direct debit payment, this matter will be investigated by NUSSL. For the avoidance of doubt, each time a direct debit payment is defaulted such default shall count as a new, additional default notwithstanding that the same direct debit payment may be defaulted on more than once or the whole or part of the amount of any such defaulted payment may be included in one or more subsequent defaulted payments.

8.3 In the event of a default under 8.2 above, NUSSL may impose the following penalties:

8.3.1 For a first default NUSSL may:

8.3.1.1 reprimand or censure the member

8.3.1.2 impose an Administration charge of up to 20% of the default amount

8.3.1.3 subject to paragraph 8.4 below suspend payment of negotiated discounts until full settlement is made. Notwithstanding settlement, all or some of those discounts may be retained by NUSSL as security for future performance by the Participant for such period as NUSSL shall consider appropriate.

8.3.2 For a second default (within 18 months of the first default) NUSSL may:

8.3.2.1 impose or continue the same sanctions as it has or might have imposed for a first default

8.3.2.2 impose an administration charge of up to 30% of the default amount (for which NUSSL may in its discretion set a repayment schedule and for any default under such schedule by the Participant, NUSSL may impose the same sanctions as might be imposed for a third default as described below)

8.3.3 For a third default (within a 2 year period of the first default) the Purchasing Consortium CEU shall refer the Participant to NUSSL and make recommendations as to the sanctions to be imposed which may include all or any of the following:

8.3.3.1 NUSSL may impose or continue all or any of the sanctions which they have or might have imposed for previous defaults.

8.3.3.2 NUSSL may terminate the purchasing membership of the Participant.

8.3.3.3 Subject to paragraph 4 below the Participant shall forfeit all discounts negotiated on their behalf for the year in question.

8.3.3.4 The Participant shall pay to NUSSL a sum assessed by NUSSL to compensate for loss of bank interest to Scheme Accounts.

8.4 In the event of any default and as further security for the performance of its obligations under this rule NUSSL shall be entitled and is authorised by the Participant to deduct, set off and on behalf of the Participant, pay, all and any amounts due from the Participant to NUSSL or any other Participant, from and against all discounts and other sums otherwise due to the Participant under the terms of the Central Billing Scheme.

8.5 If any one or more of the insolvency events listed below shall occur to the Participant, NUSSL may impose all or any of the sanctions that it might impose if the Participant had committed a third default (within a two year period of a first default) as described in paragraph 8.3.3 above and the provisions of paragraph 8.4 above shall also apply.

8.5.1 If any order is made or an effective resolution passed for winding up the Participant other than for the purpose of solvent reconstruction or amalgamation;

8.5.2 If the Company goes into administration under any of the provisions of the Insolvency Act 1986 or any Application or Notice of Intention to appoint an administrator is issued under those provisions;

8.5.3 If any incumbrancer shall take possession of or a receiver is appointed over the undertaking property or assets or any part thereof of the Participant;

8.5.4 If a distress, execution or other legal process is levied against any of the property or assets of the Participant that is not discharged or paid within 14 days;

8.5.5 If the Participant stops payment or ceases or threatens to cease carrying on its business or the major part thereof or (other than for the purpose of a solvent reconstruction or amalgamation) sells or transfers the whole or the major part of its undertaking property or (except in the ordinary course of business) assets whether by a single or series of transactions;

8.5.6 If any other event occurs or circumstance arises which in the reasonable opinion of NUSSL will materially and adversely affect the ability of the Participant to perform all or any of its obligations under or otherwise to materially comply with the terms of the Central Billing System.

9 **Resignation from the Purchasing Consortium**

9.1 A Participant may resign from the Purchasing Consortium at any time provided that they give NUSSL six months written notice of their intention to do so. All of the provisions of these Rules apply until the expiry of such notice.

9.2 Any Participant that resigns or is removed from the Purchasing Consortium agrees that they will keep confidential and not disclose, other than as required by law, the prices, volumes and other commercially sensitive information to which they have or have had access to as a result of their participation for a period of five years following the termination of their participation.

We the undersigned agree as follows:

In recognition of the privileges, facilities and benefits provided by participation in the NUSSL Purchasing Consortium, we agree to conform to these Rules and any policies agreed from time to time by the Purchasing Consortium CEU. We acknowledge that failure to comply with these Rules may result in removal from the Purchasing Consortium.

We acknowledge that once registered as a Participant we shall remain a Participant until we resign as such or are removed from the Consortium by NUSSL.

for and on behalf of**(Insert name of Participant)**

.....(signature)

.....(print name)

.....(position - Senior Staff Member)

.....(date)

.....(signature)

.....(print name)

.....(position - Executive Officer)

.....(date)

Please return by post immediately to Central Billing Manager at

NUS Services Ltd

**Ian King House
Snape Road
Macclesfield
Cheshire
SK10 2NZ**