

CONDITIONS OF CONTRACT FOR SUPPLIES AND SERVICES (English Law Version)

These Conditions may only be varied with the written agreement of the University.

No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

1. DEFINITIONS

In these Conditions:

'University' means the University of Westminster;

'Contractor' means the person, firm or company to whom the Contract is issued;

'Services' means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'Premises' means the location where the services are to be performed, as specified in the Purchase Order;

'Contract' means the contract between the University and the Contractor consisting of the Purchase Order, these Conditions, and any other documents (or parts thereof) specified in the Purchase Order;

'Purchase Order' means the document setting out the University's requirements for the Contract.

2. VARIATION OF THE SERVICES

The University reserves the right by notice to the Contractor to modify the quality or quantity of the Services and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed between THC parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 20.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

3.1 The Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the Services and Premises.

3.2 The University shall, at the request of the Contractor, grant such access as may be reasonable for this purpose.

4. CONTRACTOR'S STATUS

In carrying out the Services the Contractor shall be acting as principal and not as the agent of the University.

Accordingly:

(a) the Contractor shall not (and shall procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the University, and

(b) nothing in this Contract shall impose any liability on the University in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the University to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the University, its staff or agents.

5. CONTRACTOR'S PERSONNEL

5.1 The Contractor shall take the steps reasonably required by the University to prevent unauthorised persons being admitted to the Premises. If the University gives the Contractor notice that any person is not to be admitted to or is to be removed from

the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the University the Contractor shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

5.2 If and when instructed by the University, the Contractor shall give to the University a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the University may reasonably require.

5.3 The decision of the University as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of it by the Condition shall be final and conclusive.

5.4 The Contractor shall bear the cost of any notice, instruction or decision of the University under this condition.

6. MANNER OF CARRYING OUT THE SERVICES

6.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the University's prior written consent.

6.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable it to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the University may reasonably require.

6.3 The University shall have the power at any time during the progress of the Services to order in writing:

- (a) the removal from the Premises of any materials which in the opinion of the University are either hazardous, noxious or not in accordance with the Contract, and/or
- (b) the substitution of proper and suitable materials, and/or
- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor or any work which, in respect of material or workmanship, is not in the opinion of the University in accordance with the Contract.

6.4 On completion of the Services the Contractor shall remove its plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

7. TIME OF PERFORMANCE

The Contractor shall begin performing the Services on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The University may by written notice require the Contractor to execute the Services in such order as the University may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the University may from time to time require.

8. PAYMENT

8.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the University.

8.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

9. FREE-ISSUE MATERIALS

Where the University for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the University. The Contractor shall maintain all such materials in good order and condition and shall

use such materials solely in connection with the Contract. The Contractor shall notify the University of any surplus materials remaining after completion of the Services and shall dispose of them as the University may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of its servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the University, the Contractor shall deliver up such materials whether processed or not to the University on demand.

10. AUDIT

The Contractor shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the University of all expenditures which are reimbursable by the University and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the University on a time charge basis. The Contractor shall on request afford the University or its representatives such access to those records as may be required by the University in connection with the Contract.

11. CORRUPT GIFTS OR PAYMENT'S

The Contractor shall not offer or give, or agree to give to any employee or representative of the University any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the University or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

12. PATENTS AND INFORMATION

12.1 It shall be a condition of this Contract that, except to the extent that the Services incorporate designs furnished by the University, the Services will not infringe any patent, trade mark, registered design, copyright or the right in the nature of industrial property of any third party and the Contractor shall indemnify the University against all actions, claims, demands, costs and expenses which the University may suffer or incur as a result of or in connection with any breach of this Condition.

12.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs or other materials:

- (a) furnished to or made available to the Contractor by the University are hereby assigned to and shall vest in the University absolutely,
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the University absolutely, and (without prejudice to Condition 15.2) the Contractor shall not and shall procure that its servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the University use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but not without prejudice to the generality of the foregoing) the Contractor shall not refer to the University or the Contract in any advertisement without the University's prior written consent.

12.3 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. INDEMNITY AND INSURANCE

13.1 The Contractor shall **indemnify** the University, its servants and agents against all actions, suits, claims, demands, costs and expenses incurred by or made against the University, its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.

13.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the **indemnity** in

Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or willful act or omission of the University or any servant or agent of the University) the **indemnity** contained in Condition 13.1 shall **not apply** to the extent that the loss, damage or injury is caused by the negligent or willful act or omission of the University or any servant or agent of the University.

13.3 The Contractor shall have in force and shall require any sub-contractor to have in force:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5,000,000 for any one incident and unlimited in total, unless otherwise agreed by the University in writing.

13.4 The policy or policies of insurance referred to in paragraph 13.3 shall be shown to the University whenever it requests, together with satisfactory evidence of payment of premiums.

14. EQUALITY AND DIVERSITY

14.1 The Contractor agrees to comply with the University's policies and procedures to prevent unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief.

14.2 In accordance with its responsibilities under the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003) to eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people of different racial groups, the University requires its suppliers, contractors and contractors to comply with the terms of this section.

14.3 The Contractor warrants that its own practices and procedures comply with legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination.

14.4 The Contractor will provide such information as required by the University in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the University or a body empowered to carry out such investigations under the relevant legislation.

14.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Contractor shall indemnify the University with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the University during or in connection with any such investigation or proceedings and further indemnify the University for any compensation, damages, costs or other award the University may be ordered or required to pay to a third party.

14.6 Without prejudice to its remedies set out above, the University may terminate the Agreement if notice has been given to the Contractor of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Contractor has failed to remedy the breach within the stated period.

15. CONFIDENTIALITY

15.1 The Contractor shall keep secret and not disclose and shall procure that its employees keep secret and do not disclose any information of a confidential nature obtained by it by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision. The provision of this paragraph shall apply during the continuance of this Contract and after its termination howsoever arising.

16. TERMINATION

- 16.1 The Contractor shall notify the University in writing immediately upon the occurrence of any of the following events:
- (a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or he/she makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his/her affairs; or
 - (b) where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
 - (c) where the Contractor is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

16.2 On the occurrence of any of the events described in paragraph 16.1 or, if the Contractor shall have committed a material breach of the Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the University in writing to do so or, where the Contractor is an individual, if he/she shall die or be adjudged incapable of managing his/her affairs within the meaning of Part VII of the Mental Health Act 1983, the University shall be entitled to terminate this Contract by notice to the Contractor with immediate effect. Thereupon, without prejudice to any other of its rights, the University may itself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Contractor) all materials, plant and equipment on the Premises belonging to the Contractor, and the University shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by the University (including the University's own costs). If the total cost to the University exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by the University from the Contractor.

16.3 In addition to its rights of termination under paragraph 16.2, the University shall be entitled to terminate this Contract by giving to the Contractor not less than thirty days notice to that effect.

16.4 Termination under paragraphs 16.2 and 16.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the University and shall not affect the continued operation of Conditions 12 and 15.

17. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable to the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with the University.

18. ASSIGNMENT AND SUB-CONTRACTING

18.1 The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the University. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract or these conditions.

18.2 Where the University has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the University immediately it is issued.

19. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

20. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the University is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by the University and one by the Contractor or their Umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

21. HEADINGS

The headings to Conditions shall not affect their interpretation.

22. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the University to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

Revised February 2011