

CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

1. DEFINITIONS

In these Conditions:

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

'Contract Front Sheet' means the document which includes the commercial information relating to the supply of Goods and/or Services under the Contract and (if applicable) any variances to these Conditions;

'Data Protection Legislation' means the Data Protection Act 2018, or, for the period it remains in force in the UK, the General Data Protection Regulation (EU) 2016/679 ('GDPR') (as applicable) and any other applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time);

'Goods' means the goods (or any part of them) to be supplied to the University by the Supplier, as specified in the Order Documentation;

'Intellectual Property Rights' means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

'Premises' means the location where the Services are to be performed or the Goods are to be delivered, as specified in the Order Documentation;

'Order Documentation' means the document(s) setting out the University's requirements for the Contract including but limited to a Contract Front Sheet and/or purchase order (as applicable);

'Quotation' means the Supplier's quotation issued to the University, setting out indicative details of the Goods and/or Services (including the price) to be supplied to the University in accordance with these Conditions;

'Services' means the services to be provided as specified in the Order Documentation;

'Supplier' means the person, firm or company supplying Goods and/or Services under the Contract;

'University' means the University of Westminster or a University Subsidiary (as the case may be);

'University Materials' means all materials, specifications, information and data supplied by or on behalf of the University to facilitate the Supplier's performance of the Contract; and

'University Subsidiary' means a subsidiary (as defined in section 1159 of the CA 2006) of the University of Westminster.

2. BASIS OF CONTRACT

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No variation to the Conditions and/or the Contract shall be binding unless agreed in writing between the Supplier and the University in accordance with Condition 23. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier which are inconsistent with the Conditions.
- 2.2. The University shall provide to the Supplier all information which the Supplier reasonably requests in order to enable the Supplier to compile the Quotation.
- 2.3. The Supplier shall then issue a Quotation, which shall constitute an offer or a counter offer (as the case may be). The Quotation shall be deemed to be accepted:
 - 2.3.1. where the Supplier has submitted a Quotation as part of the University's tender process, by the University giving the Supplier notice of their successful tender; or
 - 2.3.2. otherwise on the issuance of the Order Documentation by the University, at which point the Contract shall come into existence ("Commencement Date").
- 2.4. If there is any conflict between the documents which form the Contract, they shall take priority in the following order to the extent of the conflict:
 - 2.4.1. the Order Documentation; and
 - 2.4.2. the Conditions.

3. VARIATION OF THE GOODS OR SERVICES

- 3.1. The University reserves the right by notice to the Supplier to modify the quality or quantity of the Services or Goods and any alteration to the Contract price or the completion date arising by reason of such modification shall be agreed between the parties in writing. Failing agreement the matter shall be determined in accordance with the provisions of Condition 24.

4. INSPECTION OF PREMISES AND NATURE OF GOODS AND SERVICES

- 4.1. The Supplier 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/or Goods to be supplied, and satisfied itself in relation to all matters connected with the Services, Goods and Premises.
- 4.2. The University shall, at the request of the Supplier, grant such access as may be reasonable for this purpose. The University reserves the right to accompany the Supplier and/or its personnel whilst they are on the Premises.

5. SUPPLIER'S STATUS AND OBLIGATIONS

- 5.1. In providing the Goods or carrying out the Services the Supplier shall be acting as principal and not as the agent of the University. Accordingly:
 - 5.1.1. the Supplier 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 Supplier is acting as the agent of the University; and
 - 5.1.2. nothing in this Contract shall impose any liability on the University in respect of any liability incurred by the Supplier to any other person but, subject always to

Condition 15.3, this shall not be taken to exclude or limit any liability of the University to the Supplier 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.

- 5.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and Services.
- 5.3. The Supplier shall comply with all applicable statutory and regulatory requirements relating to the Goods and Services in the United Kingdom.

6. SUPPLIER PERSONNEL

- 6.1. The Supplier shall take the steps reasonably required by the University to prevent unauthorised persons being admitted to the Premises. If the University gives the Supplier 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 Supplier shall take all reasonable steps to comply with such notice and if required by the University the Supplier 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.
- 6.2. If and when instructed by the University, the Supplier 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.
- 6.3. 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 Supplier has furnished the information or taken the steps required of it by the Condition shall be final and conclusive.
- 6.4. The Supplier shall bear any cost incurred by the University under this Condition and such costs may be set off by the University against any of the Supplier's invoices in accordance with Condition 20.

7. MANNER OF CARRYING OUT THE SERVICES

- 7.1. The Supplier shall not commence the delivery of any of the Services on the Premises without first obtaining the University's purchase order in respect of the Services and without the University's prior written consent.
- 7.2. Access to the Premises shall not be exclusive to the Supplier but only such as shall enable it to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the University may reasonably require.
- 7.3. The University shall have the power at any time during the progress of the Services to order in writing:
 - 7.3.1. 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
 - 7.3.2. the substitution of proper and suitable materials, and/or

- 7.3.3. 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.
- 7.4. On completion of the Services the Supplier 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.

8. SUPPLY OF GOODS

- 8.1. The Supplier shall ensure that the Goods:
- 8.1.1. correspond with the specification in the Order Documentation;
 - 8.1.2. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the University (including in the Order Documentation and whether made known expressly or by implication), and in this respect the University relies on the Supplier's skill and judgement;
 - 8.1.3. are free from defects in design, materials and workmanship and remain so:
 - 8.1.3.1. for up to 12 months after delivery; or
 - 8.1.3.2. if the Goods have a specific shelf life, the shelf life of the product (and the Supplier must inform the University of any applicable shelf life in the Quotation);
 - 8.1.4. in respect of their use, do not cause the University (and/or its end customer) to be in breach of any third party Intellectual Property Rights.
- 8.2. The Supplier shall deliver the Goods:
- 8.2.1. on the date specified in the Order Documentation; and
 - 8.2.2. to the Premises set out in the Order Documentation ("**Delivery Location**").
- 8.3. Delivery of the Goods shall be completed on the unloading of the Goods by the Supplier at the Delivery Location. Title and risk in the Goods shall pass to the University on completion of delivery.
- 8.4. The Supplier shall not deliver Goods which contain hazardous chemicals and substances without the University's prior written consent. If it is agreed that the Goods may be delivered to the University, the Supplier agrees to comply with the University's health and safety policies and procedures in respect of the delivery and the Supplier shall provide any and all data and information which the University reasonably requests (as well as providing any and all data and information the Supplier is obliged by law to provide) as to the storage, handling and/or use of the Goods in question and such information shall be sent, by email, to the email address stated in the Order, with a copy to the Head of Procurement, from time to time.
- 8.5. The University may inspect and test the Goods. If following such inspection or testing the University considers that the Goods do not comply, or are unlikely to comply, with the Supplier's undertakings at Condition 8.1, the University shall inform the Supplier and the Supplier shall immediately take such remedial action as the University deems necessary to ensure compliance.

9. TIME OF PERFORMANCE

- 9.1. Time is of the essence in relation to the Goods and Services delivered under these Conditions and failure to deliver the Goods and/or perform the Services by the applicable dates shall entitle the University to terminate the contract immediately under Condition 19.2. The University may by written notice require the Supplier to execute the Services in such order as the University may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the University may from time to time require.

10. PAYMENT

- 10.1. Unless otherwise stated in the Contract, payment will be made within 30 days of the invoice date, submitted monthly in arrears, for work completed to the satisfaction of the University.
- 10.2. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

11. FREE ISSUE MATERIALS

- 11.1. Where the University for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the University. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier 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 Supplier or any of its servants, agents or sub-Suppliers shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the University, the Supplier shall deliver up such materials whether processed or not to the University on demand or on the termination (howsoever caused) of the Contract.

12. AUDIT

- 12.1. The Supplier 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 Supplier paid for by the University on a time charge basis. The Supplier 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.

13. CORRUPT GIFTS OR PAYMENTS

- 13.1. The Supplier 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 Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

14. INTELLECTUAL PROPERTY

- 14.1. All Intellectual Property Rights arising, developed or created as a result of the performance of the Contract (whether by the Supplier and/or its representatives, sub-Suppliers, employees, agents, consultants and/or other representatives) shall be owned by the University and the Supplier hereby assigns any such Intellectual Property Rights to the University.
- 14.2. All University Materials are the exclusive property of the University. The University grants the Supplier a fully paid-up, non-exclusive, revocable, royalty-free non-transferable licence to use (including the creation of copies of) the University Materials for the term of the Contract for the sole purpose of providing the Goods and Services to the University.
- 14.3. The Supplier shall fully indemnify the University against all liabilities, costs, expenses, damages and losses suffered or incurred by the University arising out of or in connection with any claim made against the University for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the manufacture, supply or use of the Goods, or receipt, use or supply of the Services in accordance with the Contract (excluding the University Materials).
- 14.4. The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 14.5. At its own expense the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Condition.

15. INDEMNITY AND INSURANCE

- 15.1. The Supplier 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.
- 15.2. The indemnity contained in Condition 15.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the University or any servant or agent of the University.
- 15.3. Subject to the provisions of Condition 15.2, the total aggregate liability of the University to the Supplier in respect of all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) howsoever suffered or incurred by the Supplier shall be the price of the Goods and/or Services as stated in the Order Documentation.
- 15.4. The Supplier shall have in force and shall require any sub-Supplier to have in force:
 - 15.4.1. employer's liability insurance in accordance with any legal requirements for the time being in force; and
 - 15.4.2. public liability insurance for such sum and range of cover as the Supplier 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.

- 15.5. The policy or policies of insurance referred to in Condition 15.4 shall be shown to the University whenever it requests, together with satisfactory evidence of payment of premiums.

16. EQUALITY AND DIVERSITY

- 16.1. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 16.2. The Supplier 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.
- 16.3. The Supplier 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.
- 16.4. The Supplier undertakes, warrants and represents that:
- 16.4.1. neither the Supplier nor any of its officers, employees, agents or subcontractors has:
- 16.4.1.1. committed an offence under the Modern Slavery Act 2015 (a “MSA Offence”); or
- 16.4.1.2. been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- 16.4.1.3. is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 16.4.2. it shall comply with the Modern Slavery Act 2015;
- 16.4.3. it shall notify the University immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Supplier’s obligations under this clause, such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier’s obligations.
- 16.5. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its agents or sub-Suppliers and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier 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.

- 16.6. Without prejudice to its remedies set out above, the University may terminate the Agreement if notice has been given to the Supplier of a substantial or persistent breach of this Condition providing that a reasonable period has been given during which the breach may have been rectified and the Supplier has failed to remedy the breach within the stated period.
- 16.7. The Supplier undertakes to abide by the principles set out in the University's [Diversity and Dignity at Work and Study Policy](#).

17. CONFIDENTIALITY

- 17.1. The Supplier 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 disclose any confidential information, University Materials, specifications, instructions, plans, drawings, models, designs, Intellectual Property Rights or other materials or information of the University (whether or not relevant to this Contract) which the Supplier 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 Supplier shall not refer to the University or the Contract in any announcement or advertisement without the University's prior written consent. The provision of this Condition shall apply during the continuance of this Contract and after its termination howsoever arising.

18. DATA PROTECTION

- 18.1. The parties agree that where personal data (as defined in the GDPR) will be processed by the Supplier on the University's behalf the data protection schedule appended to the Contract shall govern the parties obligations in respect of such personal data in accordance with the Data Protection Legislation.

19. TERMINATION

- 19.1. The Supplier shall notify the University in writing immediately upon the occurrence of any of the following events:
- 19.1.1. where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier, 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
- 19.1.2. where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in 19.1.1 or 19.1.3 of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- 19.1.3. where the Supplier 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.

- 19.2. On the occurrence of any of the events described in Condition 19.1 or, if the Supplier shall have committed a material breach of the Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the University in writing to do so or, where the Supplier 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 Supplier with immediate effect and require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered.
- 19.3. Upon a termination under Condition 19.2, 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 Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the University shall not be liable to make any further payment to the Supplier 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 Supplier 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 Supplier, the difference shall be recoverable by the University from the Supplier.
- 19.4. In addition to its rights of termination under Conditions 19.2, the University shall be entitled to terminate this Contract by giving to the Supplier not less than thirty days' notice to that effect.
- 19.5. Termination under Conditions 19.2 and 19.4 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 14 and 17.

20. RIGHT OF SET OFF

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

21. ASSIGNMENT AND SUB-CONTRACTING

- 21.1. The Supplier 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 Supplier of any obligation or duty attributable to it under the Contract or these conditions and the Supplier shall remain liable to the University for the performance of its obligations under the Contract and for the acts and omissions of the subcontractor.
- 21.2. Where the University has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the University immediately.

22. NOTICES

- 22.1. 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, facsimile transmission and if so sent or transmitted to the address of the party shown on the Order Documentation, 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.

23. VARIATION

- 23.1. Subject to any Condition to the contrary in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties.

24. DISPUTE RESOLUTION

- 24.1. If any dispute arises in connection with this agreement, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. To initiate the mediation a party must give notice in writing to the other party to the dispute, referring the dispute to mediation.
- 24.2. If the parties are unable to resolve a dispute in accordance with Conditions 24.1, either party shall be able to refer the dispute for settlement by the courts.

25. SEVERENCE

- 25.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.

26. WAIVER

- 26.1. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

27. ENTIRE AGREEMENT

- 27.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

28. THIRD PARTY RIGHTS

- 28.1. No one other than a party to the Contract (and their permitted assigns) shall have any right to enforce it.

29. GOVERNING LAW

- 29.1. These Conditions shall be governed by and construed in accordance with English law and the Supplier 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 Supplier 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.