

TERMS AND CONDITIONS OF PURCHASE

1. **Definitions**

1.1 In these Conditions:

“Conditions”	means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the University and the Seller.
“Contract”	means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services.
“Delivery Address”	means the address stated in the contract or Order.
“Goods”	means the goods (if any) described in the contract or Order.
“Order”	means the University’s purchase order to which these Conditions are annexed.
“Price”	means the price of the Goods and/or the charge for the Services.
“Seller”	means the person so described in the contract or Order.
“Services”	means the services (if any) described in the contract or Order.
“Specification”	includes any plans drawings data or other information relating to the Goods or Services.
“University”	means <u>UNIVERSITY OF GLOUCESTERSHIRE</u>
“Works”	means the works (if any) described in the contract or Order.
“Writing”	includes facsimile, email transmission and comparable means of communications.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. **Basis of purchase.**

2.1 The Order constitutes an offer by the University to purchase the Goods, Works or Services subject to these Conditions.

2.2 These conditions apply to the Contract to any exclusion of any other terms and conditions on which any quotation has been given to the University or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 No variation to the Order or these Conditions shall be binding unless agreed in writing between the University and the Seller.

3. **Specification and Quality.**

- 3.1 The quantity, quality and description of the Goods, Works or Services shall subject as provided in these Conditions be as specified in the Order and/or in any applicable Specification supplied by the University to the Seller or agreed in writing by the University.
- 3.2 Any Specification supplied by the University to the Seller or specifically produced by the Seller for the University in connection with the Contract, together with the copyright design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the University. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is, or becomes, public knowledge through no fault of the Seller or as required for the purpose of the Contract.
- 3.3 The Seller shall comply with all current applicable regulations and legislation concerning the supply of Goods, Works or Services.
- 3.4 The Goods shall be marked in accordance with the University's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.5 Unless specifically required under the contract, there shall be no asbestos content in the goods.

4. **Price of the Goods, Works or Services.**

- 4.1 The Price of the Goods, Works or Services shall be stated in the Order and unless otherwise so stated shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the University subject to receipt of a V. A. T. invoice) and
- 4.1.2 inclusive of all charges for packaging packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties imposts or levies other than Value Added Tax.
- 4.2 No increase in the Price may be made without the prior consent of the University in writing.
- 4.3 The Seller shall take into account that:
- 4.3.1 If the Seller is a 'Public Service Company' (PSC) as defined in the HMRC changes to the Intermediaries Legislation (Chapter 8 Part 2 Income Taxes (Earnings and Pensions) Act 2003 ("ITEPA 2003")), due to come in force during April 2017, the University will deduct all relevant income tax and employee national insurance contributions from fees payable in respect of this Agreement and pay them to HMRC.
- 4.3.2 If the Seller is not a PSC as defined above then they shall be wholly responsible for all income tax and national insurance and other similar contributions or taxes (together "Taxes") which may be payable out of, or as a result of the receipt of, any fees or other monies paid or payable by the University under this Agreement.

5. **Terms of payment.**

- 5.1 Unless otherwise specified in the contract or order the Seller may invoice the University on, or at any time after, delivery of the Goods, Works or Services and each invoice shall quote the order number.

5.2 Unless otherwise stated in the order the University shall pay the price of the Goods, Works or Services within Thirty days of the date on which the relevant invoice is regarded valid and undisputed or, if later, after acceptance of the Goods or Services in question by the University.

5.3 The supplier will ensure that their sub-contractors also receive payment in accordance with paragraph 5.2 above and Section 113(2)(c) Public Contracts Regulations 2015.

6. **Delivery.**

6.1 The Goods shall be delivered to, and the Services and Works shall be performed at, the Delivery Address on the date or within the period stated in the Order.

6.2 The time of delivery of the Goods and of performance of the Services and Works is of the essence of the Contract.

6.3 If the Goods are to be delivered, or the Services or Works are to be performed, by instalments the Contract will be treated as a single contract and not severable unless agreed in writing.

6.4 The University shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the University has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.5 The Seller shall provide the University in good time with any instructions or other information required to enable the University to accept delivery of the Goods and performance of the Services or Works.

7. **Health Safety and Environment.**

7.1 The seller shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous goods, the provision of data sheets for hazardous materials.

7.2 The Seller shall promptly notify the University of any health and safety hazards which may arise in connection the performance of the service.

7.3 The University shall promptly notify the Seller of any health and safety hazards which may exist or arise at University premises which may affect the Seller in connection the performance of the service.

7.4 The Seller shall inform all Staff engaged in the provision of Services at University premises of all know health and safety hazards and shall instruct those staff in connection with any necessary safety measures.

7.5 Whilst on University premises the Seller shall comply with any health and safety measures implemented by the University in respect of Personnel and other Persons, including but not limited to students, staff and visitors, working on those premises.

7.6 The Seller shall notify the University Representative immediately in the event of any incident occurring in the performance of the Services on University Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

8 **Risk and Property.**

8.1 Risk of damage to, or loss of, the Goods shall pass to the University upon delivery to the University in accordance with the Contract.

- 8.2 The property in the Goods shall pass to the University upon delivery unless payment for the Goods is made prior to delivery when it shall pass to the University once payment has been made and the Goods have been appropriated to the Contract.

9. Warranties and liability.

- 9.1 The Seller warrants to the University that the Goods:
- 9.1.1 will be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
 - 9.1.2 will be free from defects in design material and workmanship;
 - 9.1.3 will correspond with any relevant Specification or sample and
 - 9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
 - 9.1.5 will be supplied using the minimal amount of packaging to protect the goods and remove any packaging where possible.
 - 9.1.6 are manufactured where possible from products / materials sourced from sustainable / renewable sources.
- 9.2 The Seller warrants to the University that the Services will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for the University to expect in all the circumstances.
- 9.3 Without prejudice to any other remedy if any Goods or Services are not supplied or performed in accordance with the Contract then the University shall be entitled:
- 9.3.1 to require the Seller to repair the Goods or to supply replacement Goods, Services or Works in accordance with the Contract within Seven days or
 - 9.3.2 at the University's sole option and whether or not the University has previously required the Seller to repair the Goods or to supply any replacement Goods, Works or Services to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 9.4 Seller shall indemnify the University in full against all liability loss damages costs and expenses (including legal expenses) awarded against or incurred or paid by the University as a result of or in connection with:
- 9.4.1 breach of any warranty given by the Seller in relation to the Goods, Works or Services.
 - 9.4.2 any claim that the Goods infringe, or their importation use or resale infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any Specification supplied by the University.
 - 9.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods.
 - 9.4.4 any act or omission of the Seller or its employees agents or sub-contractors in supplying delivering and installing the Goods and
 - 9.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services or Works.
- 9.5 Neither the Seller nor the University shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services if the delay or failure was beyond that party's reasonable control. Neither the Seller nor the University shall be liable for any and all losses, (including loss of data) damages, costs, claims and other liabilities which arise as a result of any delay or

interruption in, or any non-delivery, or missed delivery or failure of the Equipment and/or Services due to circumstances beyond their or any of their suppliers' reasonable control (including, but not limited to, fire, lightning, explosion, war, disorder, flood, industrial dispute, sabotage, weather conditions or acts of local or central Government or other competent authorities).

10. Diversity and Equality.

- 10.1 The Parties shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment of that Act or analogous legislation which has been, or may be, enacted from time to time relating to discrimination in employment or discrimination in the delivery of public services.
- 10.2 You warrant that Your own practices and procedures comply with legislation to prevent unlawful discrimination and that Your employees are fully trained on matters relating to the prevention of unlawful discrimination and You will provide such information as required by Us in relation to Your compliance with anti-discrimination legislation and will co-operate with any investigation by Us or a body empowered by Us to carry out such investigations under the relevant legislation. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission by You or Your agents or sub-contractors and where there is a finding against You in any such investigation or proceedings You shall indemnify Us with respect to all costs and charges and expenses (including legal and administrative expenses) incurred by Us during or in connection with any such investigation or proceedings and further indemnify Us for any compensation, damages, costs or other award We may be ordered or required to pay to a third party as a result.
- 10.3 Without prejudice to the remedies set out above, We may terminate the contract if notice has been given to Us 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 You have failed to remedy the breach within the stated period.

11 Sustainability

- 11.1 The University has an established strategic commitment to sustainability in all its operations. We require our suppliers to take account of sustainability risks and impacts in the production, transportation, storage and supply of the goods, works and services that they provide us. Considerations should include: energy and waste management, responsible procurement practices and supply chain integrity, environmental performance, and technical innovations.
- 11.2 Without prejudice to the remedies set out above, We may terminate the contract if notice has been given to Us 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 You have failed to remedy the breach within the stated period.

12 Modern Slavery and Human Trafficking

- 12.1 The University requires all of its suppliers to ensure that they comply with the provisions of the Modern Slavery Act 2015.
- 12.2 Without prejudice to the remedies set out above, We may terminate the contract if notice has been given to Us of a breach of this clause.

13 Freedom of Information and Data Protection.

- 13.1 The Seller acknowledges that the University is subject to the requirements of the Data Protection legislation (General Data Protection Regulation (Regulation (EU) 2016/679)), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and, from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), all as amended from time to time.
- 13.2 The Seller shall offer such prompt and reasonable assistance to the University as the University may request from time to time, to assist it in complying with its information disclosure and incident reporting obligations under the legislation set out at Clauses 13.3 and 13.4.
- 13.3 Where the University or the Seller handle any personal or sensitive personal data (within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679)), they undertake to comply with their respective obligations under that legislation. The University's procurement related privacy notice can be found on this [link](#).
- 13.4 Where the Seller receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 relating to the operation of this agreement, the Seller shall promptly pass the request to the University and shall not respond directly to any such request without the University's prior written consent.

14 Termination.

- 14.1 The University shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
- 14.1.1 the Seller make any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or
- 14.1.2 an encumbrance takes possession or a receiver is appointed of any of the property or assets of the Seller or
- 14.1.3 the Seller ceases, or threatens to cease, to carry on business or
- 14.1.4 the University reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

15. General.

- 15.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights, or sub-contract any of its obligations under the Contract.
- 15.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its address set out in the Order or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 15.3 No waiver by the University of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.4 The Contract shall be governed by the laws of England.