

CONDITIONS OF PURCHASE

These Conditions may only be varied with the written agreement of the Buyer. No terms or conditions put forward at any time by the Seller shall form any part of the Contract or the Order.

1. DEFINITIONS

In these Conditions 'the Buyer' means University of Birmingham Enterprise Limited, 'the Seller' means the Seller named overleaf and the 'Goods' and 'Services' to be supplied and provided means any such goods and/or services as are to be supplied to the Buyer by the Seller (or by any of the Seller's sub-contractors, servants or agents) pursuant to or in connection with this order ('the Order').

2. THE GOODS AND/OR SERVICES

2.1 The Goods and Services shall be to the reasonable satisfaction of the Buyer and shall conform in all respects with any particulars specified in the Order or any documents referenced or attached to the Order and in any variations thereto.

2.2 The Goods and Services shall conform in all respects with the requirements of any statutes, orders, regulations or by-laws from time to time in force.

2.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Seller by the Buyer and the Buyer relies on the skill and judgement of the Seller in the supply of the Goods and the provision of any Services and the execution of the Order.

3. THE PRICE

3.1 The price of the Goods and Services shall be as stated in the Order and no increase will be accepted by the Buyer unless agreed in writing before the execution of the Order.

3.2 Provided that the Goods and Services have been received and accepted by the Buyer as being accordance with the requirements as set out in the Order, payment shall, unless otherwise agreed in writing, be due 30 days from the date of invoice or the date of the receipt by the Buyer of correct invoice documentation whichever is the later.

4. DELIVERY

4.1 The Goods and Services shall be delivered (unless otherwise stated in the Order and in the case of Goods) carriage paid to or at the place named overleaf. Any access to premises and any labour and equipment that may be provided by the Buyer in connection with delivery shall be provided without acceptance by the Buyer of any liability whatsoever and the Seller shall indemnify the Buyer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery of Goods or Services or installation of any Goods to the extent that any such damage or injury is attributable to any act or omission of the Seller or any of his sub-contractors, servants or agents. Nothing in this sub-clause 4.1 shall relieve the Buyer of its obligations to indemnify the Seller in respect of personal injury (including death) which is caused as a direct result of the negligence of the Buyer.

4.2 Where any access to the premises is necessary in connection with delivery or installation the Seller and his sub-contractors shall at all times comply with the reasonable requirements of the Buyer.

4.3 The time of delivery and execution of the Order shall be of the essence and failure to deliver within the time promised or specified shall enable the Buyer (at its option) to release himself from any obligation to accept and pay for the Goods and Services or to cancel all or part of the Order therefor, and without prejudice to the Buyer's other rights and remedies, obtain the Goods and Services elsewhere and the Seller shall indemnify the Buyer in respect of any excess costs incurred by the Buyer in obtaining such Goods and Services.

5. PROPERTY AND RISK

Property and risk in the Goods and any output of the Services shall without prejudice to any of the rights or remedies of the Buyer (including the Buyer's rights and remedies under Condition 7 hereof) pass to the Buyer at the time of delivery.

6. DAMAGE IN TRANSIT

On despatch of any consignment of the Goods the Seller shall send to the Buyer at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of despatch, the number of packages and their weight and volume. The Seller shall free of charge and as quickly as possible either repair or replace (as the Buyer shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Buyer provided that;

- in the case of damage to such Goods in transit the Buyer shall within 30 days of delivery give notice to the Seller that the Goods have been damaged.
- in the case of non-delivery the Buyer shall (provided that the Buyer has been advised in writing of the despatch of the Goods) within 10 working days of the notified date of delivery, give notice to the Seller that the Goods have not been delivered.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Seller shall permit the Buyer or his authorised representatives to make any inspections or tests as the Buyer may reasonably require at the Seller's premises and on the Buyer's site following delivery and installation of the Goods, and the Seller shall provide such assistance as the Buyer reasonably requires in order to complete such inspections or tests free of all charges. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Buyer of any rights or remedies in respect of the Goods.

7.2 The Buyer may by written notice to the Seller reject any Goods and Services which fail to meet the requirements specified in the Order. Such notice shall be given within a reasonable time after delivery to the Buyer of the Goods and Services concerned. If the Buyer shall reject any Goods or Services pursuant to this Condition the Buyer shall be entitled (without prejudice to its other rights and remedies) to, at the Buyer's sole and absolute discretion and promptly, without undue delay and within an agreed timescale, either:

- have the Goods repaired by the Seller or have Goods replaced and Services re-provided by the Seller with Goods and Services which comply in all respects with the requirements specified in the Order; or
- have the Goods repaired and/or replaced with Goods of the same or substantially equal quality and specification and have the Services provided by a competent third party selected by the Buyer, whereupon any additional costs incurred by the Buyer in obtaining such repairs and replacement Goods and Services shall be for the Seller's account; or
- obtain a refund in full from the Seller in respect of all monies paid for such Goods and Services plus any additional costs and expenses incurred by the Buyer due to the rejection of any Goods and Services.

7.3 The guarantee period applicable to Goods and Services shall be 12 months from acceptance of Goods and Services or putting in to service of any Goods by the Buyer or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Buyer and the Seller). If the Buyer shall within such guarantee period or within 30 days thereafter give notice in writing to the Seller of any defect in and any damage to any of the Goods as may have arisen during such guarantee period under proper and normal use the Seller shall (without prejudice to any other rights and remedies which the Buyer may have) as quickly as possible remedy such defects promptly and without undue delay (whether by repair or replacement as the Buyer shall elect) without cost to the Buyer and at the Buyer's site specified on the face of the Order.

7.4 Any Goods rejected or returned by the Buyer as described in paragraphs 7.2 or 7.3 shall be returned to the Seller at the Seller's sole risk and expense.

8. LABELLING AND PACKAGING

8.1 Goods shall be packed and marked in a proper manner and in accordance with the Buyer's instructions and any statutory requirements or requirements of the carriers. In particular the Goods shall be marked with the Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings in compliance with all and any legislation in force at the time of despatch. The Seller shall indemnify the Buyer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of this Condition.

8.2 Unless expressly otherwise agreed in writing the Seller will retain, or collect and dispose of all packaging at no cost to the Buyer and in accordance with all relevant statutory obligations, legislation and regulations.

9. PATENTS AND INFORMATION

9.1 It shall be a condition of the Order that, except to the extent that the Goods and any output of the Services are made up in accordance with, or contain designs and specifications furnished by the Buyer, none of the Goods or output of the Services will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Seller shall indemnify the Buyer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material provided or made available to the Seller by the Buyer or created by the Seller pursuant to or in the execution of the Order shall remain vested solely in the Buyer and the Seller shall not (except to the extent necessary for the implementation of this Order) without prior written consent of the Buyer use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Order) which the Seller may obtain or create for the Buyer pursuant to or in the execution of the Order. Without prejudice to the generality of the foregoing, the Seller shall not refer to the Buyer or the Order in any advertisement or other promotional material without the Buyer's prior written consent. The University will aim to pay all non-contested invoices within 30 days.

10. HEALTH AND SAFETY

The Seller represents and warrants to the Buyer that the Seller has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Seller has made available to the Buyer adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when handled, stored and put to use by the Buyer the Goods will be safe and without risk to health. The Seller shall indemnify the Buyer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of this Condition.

11. INDEMNITY AND INSURANCE

11.1 Without prejudice to the rights or remedies of the Buyer (including the Buyer's rights and remedies under Condition 7), the Seller shall indemnify the Buyer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Seller, its sub-contractors, agents or employees.

11.2 The Seller shall be obliged to keep the Buyer indemnified in respect of all loss and expense which results during proper use directly or indirectly from defective materials, goods (including the Goods), workmanship or design supplied by the Seller, and against any claims for the loss or injury to any person by reason of the Seller's negligence, or any act or omission on the part of the Seller's employees, sub-contractors, or agents arising out of the performance of the Order. The Seller will also keep the Buyer indemnified against any damage to the Buyer's property (including any materials, tools or patterns sent to the Seller for any purpose). For these purposes the Seller will effect with a reputable insurance company a policy or policies of insurance covering all matters which are the subject of indemnities under these Conditions, including, without limitation Public Liability Insurance coverage of not less than five million pounds (£5,000,000) sterling and Product Liability Insurance coverage of not less than five million pounds (£5,000,000) sterling for any one, or series of claims that may arise, and (where Services are included in the scope of the Order) Professional Indemnity Insurance coverage of not less than two million pounds (£2,000,000) sterling in the aggregate and shall warrant that such insurances shall be maintained for the period of the Order and the guarantee or warranty period provided with the Goods and Services. The Seller shall produce the relevant policy or policies together receipts or other evidence of payment of the latest premium due under such policy or policies at the request of the Buyer.

12. QUALITY

In the absence of a specification or sample, any Goods supplied in accordance with this Order will be new and of good construction, sound materially, of adequate strength and free of defects in design materials and workmanship. Notwithstanding the aforementioned, Goods and Services supplied must comply with:-

- the express terms of the Order and implied conditions, warranties and terms contained in the Sale of Goods Act 1979, or the Supply of Goods and Services Act 1982, any related statutes, and any statutory re-enactment(s) or modification(s) thereof; and
- all appropriate European Union (EU) Directives applicable and relevant to the Goods and Services concerned at the time of the Order; in which case all Goods supplied must be clearly endorsed as being fully compliant with the relevant EU Directives by the application of the CE Mark in a position on the Goods which meets the requirements of the Directives; and
- any specifications of any International and/or British Standards Institution (or equivalent) which are relevant to the Goods and Services at time of the Order; and
- any combination of the above

13. CONFIDENTIALITY AND FREEDOM OF INFORMATION

The Seller shall keep secret and not disclose and shall ensure that its employees, sub-contractors, servants or agents keep secret and do not disclose any information of a confidential nature obtained by the Seller by reason of this or any other contract or order between the parties. Neither party shall be in breach of this Condition 13 to the extent that it is required to disclose any information of the other pursuant to a statutory, legal or parliamentary obligation placed on the party making the disclosure including any requirement for disclosure under the Freedom of Information Act 2000 or any subordinate legislation made under that Act or under the Environmental Information Regulations 2004. The Seller accepts that the Buyer is subject to the Acts mentioned above and will assist and co-operate with the Buyer (at the Seller's expense) to enable the Buyer to comply with its obligations under the Acts at the request of the Buyer.

14. CANCELLATION

The Buyer may cancel the Order by written notice:

- for reasons other than breach of the conditions of the Order at any time by written notice to the Seller. Provided that such cancellation is not due to a breach by the Seller, the Buyer shall pay to the Seller the costs that the Seller

can demonstrate as having been reasonably and necessarily incurred to the effective date of cancellation for the sole and absolute purposes of executing the Order and which would represent an unavoidable loss to the Seller as a direct result of the cancellation; or

(b) in the event that the Seller fails to make progress with or fails to deliver the Goods or Services by the due date for completion of the Order or commits any other breach of the terms and conditions (including these Conditions and in particular Conditions 17, 18 and 19) of the Order; or

(c) the Seller becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors, or, being a corporation, commences to be wound up or attempts to carry on its business under a receiver for the benefit of its creditors.

If the Buyer cancels the Order under the provisions of Conditions 14(b) or 14(c) the Buyer shall have the right to claim reimbursement from the Seller of all losses suffered as a result of the cancellation. The cancellation of the Order shall not affect the rights of either party accrued up to the effective date of such cancellation.

15. RECOVERY OF SUMS DUE

Wherever under the Order any sum of money is recoverable or payable by the Seller, that sum may be deducted from any sum then due, or which at any later time may become due to the Seller under the Order or under any other agreement, contract or order with the Buyer.

16. ASSIGNMENT OR SUB-CONTRACTING

The Seller shall not without the written consent of the Buyer assign the benefit or burden of the Order or any part thereof. No assignment or sub-contracting by the Seller shall in any way relieve the Seller of any of its responsibilities, liabilities or obligations under the Order.

17. EQUAL OPPORTUNITIES

The parties shall not unlawfully discriminate either directly or indirectly on such grounds as gender, race, colour, national origin, disability, sexual orientation or age within the meaning of the Equality Act 2010 or any re-enactment thereof and all legislation and directives relating to equality and discrimination.

18. DATA PROTECTION

The Seller shall comply with the Data Protection Act 1998 and any statutory amendments of re-enactments thereof and accepts that it shall be acting as a data processor (as defined by the Act) for the Buyer in respect of any Personal Data Processed by the Seller on behalf of the Buyer in the performance and execution of the Order. The Seller shall indemnify the Buyer against all losses, claims, costs, expenses or other liabilities awarded against or incurred by the Buyer as a result of any breach of this Condition 18 by the Seller.

19. FORCE MAJEURE

Neither party shall have any liability for any delay or default in the performance or completion of the Order if such delay or default is caused by reasons beyond its reasonable control, including (without limitation) war, insurrection, national emergency, terrorism, government restriction and acts of God, and in the case of the Buyer only, industrial action, unforeseen closure of the Buyer's site or operation or unavailability of key personnel. The party affected by such circumstances shall give the other party prompt written notice setting out the details of the force majeure and the other party shall grant such extension of time as may be reasonable for the performance and completion of the Order. If the circumstances of force majeure persist for more than sixty (60) days from the date of written notice either party shall have the right to cancel the Order.

20. GOOD CONDUCT

The parties shall be entitled to cancel this Agreement immediately upon written notice if the other party or its employees or agents are found to have made, offered, accepted or taken or agreed to make or take any gift, bribe, hospitality or consideration of any kind from any person or body as an inducement or reward for showing or forbearing to show favour or disfavour to any person or for doing or forbearing to do any action in relation to or for the purposes of offering or obtaining an advantage in relation to performance of this Agreement or where such action is in contravention of the Bribery Act 2010. The parties warrant that they have adequate and robust policies and procedures in place in accordance with guidance issued under the Bribery Act 2010.

21. NOTICES

Any notice given under or pursuant to the Order must be in writing and may be sent by hand or by post or transmitted by facsimile transmission to the address shown on the Order and shall be deemed to have been served on the day when in the ordinary course of the means of transmission it would be received by the addressee in normal business hours.

22. HEADINGS

The headings to Conditions shall not affect their interpretation.

23. "CALL OFFS" AND ORDERS PLACED AGAINST FRAMEWORK AGREEMENTS

If the Order form is used to make a call off and create a contract against a Framework Agreement or commitment or call off contract or any form of standing offer between the parties, the provisions of the Framework Agreement, commitment or call off contract or standing offer shall apply and shall take full and final precedence over these Conditions (and these provisions shall apply whether the relevant agreement referred to in this Condition 23 is referenced on the Order or otherwise). Accordingly these Conditions shall apply only to the extent that they are not inconsistent with the relevant agreement.

24. DISPUTE RESOLUTION

The Buyer and the Seller shall in good faith use all reasonable endeavours to resolve any dispute or difference that may arise between them in respect of any aspect of, or matter related to the Order. In the event that the parties are unable to reach a resolution within a reasonable time or one of the parties refuses to acknowledge the existence of a dispute then either party may proceed to exercise its rights under Condition 26.

25. RIGHTS OF THIRD PARTIES

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Order.

26. GOVERNING LAW

The construction validity and performance of the Order, shall be governed by the Law of England and Wales, and, subject to the provisions of Condition 24 shall be subject to the exclusive jurisdiction of the English courts.

27. MODERN SLAVERY

The University will procure Goods or Services from suppliers and their supply chains that operate a zero tolerance policy to Modern Slavery. Therefore, your organisation must comply with this requirement when supplying to the University.

28. GENERAL DATA PROTECTION REGULATION (GDPR)

The University will procure Goods and Services from suppliers that comply with the GDPR Data Privacy Regulations effective from May 2018.

29. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS REQUIREMENTS (PCI DSS)

Your organisation will be required to operate a security system for receipt of personalised data for payments that is compliant with PCI DSS.