

Terms and Conditions of Sale

General

1. In these Conditions:
 - a) THE UNIVERSITY OF BIRMINGHAM is called "The University" and the individual firm, company or other party with whom the University contracts is called "the Customer"
 - b) "Goods" means the goods articles materials and services which are to be supplied by the University
 - c) pursuant to the Contract (as hereinafter defined).
 - d) Any contract, howsoever made, between the University and the Customer ("the Contract") shall incorporate and be subject to these Conditions and receipt of Goods by the Customer shall be deemed to be conclusive proof that the Customer has accepted these Conditions in the absence of any express or other implied acceptance of those Conditions by the Customer.
 - e) Without prejudice to the generality of the foregoing, all other terms and conditions (except those implied in favour of a seller which are not inconsistent with these Conditions), whether or not the same are endorsed upon, delivered with, or referred to, in any purchase order or any other document delivered or sent by the Customer to the University, are expressly excluded. Any reference in the Contract to any document of the Customer shall not be deemed to imply that any terms or conditions endorsed upon, delivered with, or referred to, any such document, will have effect.

Prices

2. Unless otherwise provided in the Contract:
 - a) The price of the Goods is exclusive of Value Added Tax, which will be charged at the rate applicable at the appropriate tax point.
 - b) The price of the Goods includes the cost of carriage to the contracted place of delivery by the means most convenient to the University. If the Customer instructs the University to send the Goods by passenger train, parcel post, airfreight or other special transport, the additional cost will be for the account of the Customer.

Delivery and Risk

3.
 - a) Delivery of the Goods shall be made to the Customer at the place specified in the Contract or as subsequently agreed between the parties and the risk in respect of all Goods shall pass to the Customer at the time of delivery. Special notice is directed to the fact that in accordance with the provisions of Section 32 of the Sale of Goods Act 1979 delivery to the carrier will, in such circumstances, constitute delivery to the Customer.
 - b) The University shall be entitled to make delivery of the Goods by instalments and to invoice the Customer for each instalment dispatched. Where damage to or loss of the Goods occurs

before delivery thereof to the Customer the University undertakes (subject as provided below) to replace free of charge any Goods so damaged or lost in which event the time for delivery of the Goods shall be extended for such period as the University shall reasonably require for such replacement. The foregoing undertaking of the University is conditional upon the Customer giving written notice of such damage or loss with reasonable particulars thereof to the University and to the carrier within three days of the receipt of the Goods and a claim being made in writing within seven days or in the case of total loss the said notice being given within twenty eight days and the claim being made in writing forty two days of receipt of the University's or the carrier's delivery advice or other notification of dispatch;

Provided That if the Customer proves that:

- i. It was not reasonably possible for the Customer to advise the University and the carrier or make a claim in writing within the time limit applicable; and
 - ii. such advice or claim was given or made within a reasonable time;
- c) Then the University shall not have the benefit of the conclusion of liability afforded by this Condition.
- d) Save as expressly provided in this Condition, the University shall not have any liability whatsoever for or in connection with any damage to or loss of the Goods in transit to the contracted place of delivery.

Title

- 4.
- a) Title to and property in the Goods shall remain vested in the University (notwithstanding the delivery of possession of the same and the passing of the risk therein to the Customer) until:
 - i. the price of the Goods comprised in the Contract; and
 - ii. all other money due from the Customer to the University on any other account
 - b) has been paid or satisfied in full;
 - c) Until the title to and property in the Goods pass to the Customer as aforesaid the following provisions shall apply:
 - i. The University may at any time without prior notice to the Customer repossess and resell the Goods if any of the events specified in Condition 9 hereof shall occur, or if any sum owed by the Customer to the University under this or any other Contract between the Customer and the University is not paid on the due date for payment. For the purpose of exercising its rights under this sub-clause (i) the University its employees or agents together with all vehicles and plant considered by the University to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon the Customer's premises and/or other locations where any of the Goods are situated,
 - ii. The Customer shall store the Goods in a proper manner without charge to the University and ensure that they are clearly identified as belonging to the University. The University shall be entitled to examine the Goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so.

- iii. The rights and remedies conferred upon the University by this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the University under the Contract.

Performance

- 5.
 - a) The University will use its reasonable endeavours to comply with any date or dates for dispatch or delivery of the Goods as stated in the Contract, but unless the Contract otherwise expressly provides such date or dates shall constitute only statements of expectation and shall not be binding. If the University having used its reasonable endeavours fails to dispatch or deliver the Goods on such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
 - b) If the University is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) strikes, lockouts or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring, further performance of the Contract shall be suspended for so long as the University is so prevented or hindered provided that if the performance of the Contract is suspended for more than one calendar month the Customer shall be entitled by notice in writing to the University forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all Goods supplied by the University to the actual date of such termination. The University shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the University's inability to perform its obligations under the Contract by reason of any such circumstances.
 - c) Where Goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and save as provided in sub-clause (d) of this Condition no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments.
 - d) Where Goods are to be supplied or delivered by the University in accordance with periodic delivery schedules or similar notification of the delivery requirements of the Customer, the Customer shall not be entitled to cancel or vary any such delivery schedule or requirement which is expressed by the Customer to be a firm requirement without the prior written consent of the University and the University shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of any such cancellation or variation.
 - e) When delivery is agreed by the University and necessitates overtime or other additional costs, the Customer shall reimburse the University for the amount of such overtime payment or other costs. Where postponement of delivery is agreed by the University the Customer shall, if required by the University, pay all costs and expenses (including a reasonable charge for storage and insurance of the Goods and interest on the Contract price) occasioned thereby, but the goods shall be held at the Customer's risk from the time

of such postponement.

- f) If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generality of the foregoing) lack of or incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods for a period of 14 days, the University shall be entitled to payment at the Contract rate for Goods supplied or ordered and any other additional costs thereby incurred including storage, insurance and interest PROVIDED THAT if the Customer fails to collect or accept delivery of the Goods or any part thereof within 28 days of written notification from the University that the Goods are ready for collection or delivery, the University shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell the Goods and to apply the proceeds of sale thereof if sold towards payment of all sums due to the University under the Contract.

Acceptance

- 6.
 - a) Without prejudice to the Customer's rights under Condition 8 hereof the Customer shall be deemed to have accepted the Goods as being in conformity with the Contract and shall be bound to pay for them, unless written notice of rejection thereof is received by the University within 3 days of delivery. Save in the circumstances referred to in Condition 8 hereof Goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived.
 - b) If after notice of rejection has been given, the Customer deals with Goods as owner thereof or if any conduct of the Customer is inconsistent with such rejection or with the ownership of the Goods by the University, the Customer shall be deemed to have accepted the Goods and be bound to pay for them.

Payment

- 7.
 - a) Unless the Contract otherwise provides, the Contract price for Goods shall be payable not later than 30 days after the invoice date, or otherwise as by the Contract provided.
 - b) Where goods are delivered by instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in sub-clause (a) of this Condition 7.
 - c) The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the University upon the expiration of 28 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the University shall be entitled without liability to the Customer to suspend performance of or cancel in whole or in part any other contract between the University and the Customer without prejudice to any other remedy available to the University in respect of each default in payment.
 - d) Unless otherwise agreed in writing the Customer shall not be entitled to set off against monies due to the University under the Contract, any amount claimed by or due to the Customer from the University whether pursuant to the Contract or any other account whatsoever.

- e) The University shall be entitled to interest before as well as after judgment on any part of the Contract price not paid by its due date from that date until actual payment, at the rate of 4 per cent per annum above the Base Lending Rate of Lloyds Bank plc prevailing from time to time during such period.

Warranty

- 8.
 - a) Where any Goods are shown, to the reasonable satisfaction of the University, to have been defective at the time when they left the University's premises, the University shall at its sole option: (1) deliver replacement Goods to the Customer free of charge; either/or (2) refund to the Customer the Contract price of such Goods; PROVIDED THAT:
 - i. the Customer notifies the University in writing within fourteen days of becoming aware of any such defect; and
 - ii. if so required by the University all defective Goods are first returned to the University's premises; and
 - iii. the Goods have been properly and correctly stored by the Customer; and
 - iv. the liability of the University under this sub-clause (a) shall be accepted by the Customer in substitution for and to the exclusion of any and all other claims for direct loss which the Customer has or may have by reason of such defect.
 - b) The University shall not be liable for any claims for economic loss, loss of profit, loss of opportunity, loss of bargain or other direct or consequential injury, loss or damage made by the Customer against the University whether in contract or in tort (including negligence on the part of the University, its servants or agents) arising out of or in connection with any defect in the Goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or the breach of a fundamental term thereof) of the University, its employees or agents in the performance of the Contract (including, without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever).
 - c) Nothing in these Conditions shall
 - i. limit or exclude the liability of the University in respect of death or personal injury resulting from the negligence of the University, its employees or agents; or
 - ii. limit or exclude the respective rights and remedies of the University and the Customer under the Unfair Contract Terms Act 1977; or
 - iii. exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979.

Insolvency and Breach of Contract

- 9. If any of the following events occur, are threatened or in the opinion of the University are reasonably likely to occur:
 - a) The Customer shall commit any breach of Contract and shall fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of notice in writing from the University, requesting such breach to be remedied: or

- b) Any distress or execution is levied upon any of the goods or property of or in the possession of the Customer; or
- c) The Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or commits any act of bankruptcy; or
- d) The Customer (being a limited company) has a Receiver appointed of the whole or any part of Its undertaking property or assets or an order is made or a resolution passed or analogous proceeding for the winding-up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the University)
- e) the University shall thereupon be entitled without prejudice to its other rights hereunder, forthwith to suspend further performance of the Contract and of any other contract between the University and the Customer until the default has been made good or to terminate the Contract or any other contract between the University and the Customer or any unfulfilled part thereof or at the University's option to make partial supplies of Goods. Notwithstanding any such termination, the Customer shall pay to the University at the Contract rate for all Goods delivered up to and including the date of termination and shall in addition indemnify the University against any loss, damage or expense incurred by the University as a result of such default.

Severance

- 10. If at any time any one or more of these Conditions (or any paragraph sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law the same shall be deemed omitted from these Conditions and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

Health & Safety

- 11. The University represents and warrants to the Customer that the University 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 Customer has made available to the University 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/or put to use by the Customer the Goods will be safe and without risk to health. The Customer shall indemnify the University against all sections, suits, claims, demands, losses, charges, costs and expenses which the University may suffer or incur as a result of or in connection with any breach of this Condition.

Equality

- 12.
 - a) The Customer agrees to comply with the University's anti-discrimination schemes, policies and procedures to and to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people within the

meaning of the Equality Act 2010 (or any re-enactment thereof) when carrying out its activities.

- b) The Customer 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.
- c) The Customer will provide such information as required by the University in relation to its compliance with antidiscrimination legislation and will co-operate with any investigation by the University or a body empowered to carry out such investigations under the relevant legislation.
- d) Where any investigation is conducted, or proceedings are brought which arise directly out of any act or omission of the Customer, its agents or sub-contractors and where there is a finding against the Customer in any such investigation or proceedings, the Customer shall indemnify the University in 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.
- e) Without prejudice to its remedies set out above, or any other rights or remedies that may be available to the University, the University may terminate the Contract forthwith and without liability of any kind (save for any liabilities that may have accrued prior to the date of termination) if notice has been given to the Customer of a substantial or persistent breach of this clause.

Bribery Act

13.

- a) The parties shall be entitled to cancel the Contract 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 Contract or where such action is in contravention of the Bribery Act 2010 or any re-enactment thereof.
- b) The parties warrant that they have adequate and robust policies and procedures in place in accordance with guidance issued under the Bribery Act 2010 and will comply with the same at all times.

Data Protection

- 14. The parties undertake to observe and abide by the provisions of the Data Protection Act 1998 or any re-enactment thereof in relation to all personal data and sensitive personal data held by one or the other either directly or indirectly related to the performance of this Contract.

Waiver

15. The rights and remedies of the University under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the University nor by any failure of or delay by the University in asserting or exercising any such rights or remedies.

Law

17. These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and the University and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts.