



## Terms and Conditions of Purchase (Goods and Services)

### 1. Definitions

In these Conditions:

**Buyer** means the University of Bath.

**Contractor** means the supplier of Goods or Services to the Buyer.

**Contract** means the contract between the Buyer and the Contractor consisting of the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order.

**Goods** means those Goods to be supplied as specified in the Purchase Order.

**Intellectual Property Rights** means all patents, trademarks, service marks, registered designs, utility models, plant variety rights, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, copyright, database rights, design rights, inventions, confidential information (including without limitation know how) and any other similar rights situated in any country in the world;

**Purchase Order** means the Buyer's purchase order which specifies that these conditions apply to it.

**Services** means any services to be performed as specified in the Purchase Order.

**UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

### 2. Law

The Contract shall in all respects be construed in accordance with the laws of England and all disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the English courts.

### 3. Variation

The Contract may only be varied following receipt of a written confirmation of the variation from the Buyer's Head of Procurement.

### 4. Conditions for the Supply of Goods

The Contractor shall supply the Goods which shall be delivered, carriage paid, in accordance with agreed lead times, to the delivery address specified in the Purchase Order. Delivery is to be made between 9.00 am and 4.00 pm Monday to Friday (unless otherwise agreed). A priced delivery note (goods receipt) must accompany the Goods. If Goods are incorrectly delivered the Contractor will be held responsible for any additional expense incurred in delivering them to their correct destination.

### 5. Acceptance of Goods

Goods may be returned at the Contractor's expense if they do not correspond with the Contract. Any variation to the amount or quality of the Goods must be notified

to the Buyer with all possible speed. No variation will be accepted unless confirmed in accordance with Clause 3 above.

In the case of Goods delivered by the Contractor not conforming with the Contract whether by reason of being a quantity or quality not stipulated or being unfit for the purpose for which they are required, the Buyer shall have the right to reject such Goods within a reasonable time of their delivery and to purchase elsewhere goods as near as practicable to the same specifications and conditions as circumstances shall permit but without prejudice to any other right which the Buyer may have against the Contractor.

Before exercising the right to purchase elsewhere the Buyer shall give the Contractor a reasonable opportunity to replace rejected Goods with Goods which conform to the Contract. The making of payment shall not prejudice the Buyer's right of rejection. Any inspection, checking, approval or acceptance given on behalf of the Buyer shall not relieve the Contractor or its sub-contractor from any obligation under the Contract.

Risk in the Goods shall only pass to the Buyer when the Goods have been delivered in accordance with 4 above.

## **6. Conditions for the Supply of Services**

The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with all applicable legislative and statutory requirements. Any variation to the amount or quality of the Services must be notified to the Buyer with all possible speed. No variation will be accepted unless confirmed in accordance with Clause 3 above.

## **7. Acceptance of Services**

In the case of Services performed by the Contractor not conforming with the Contract whether by reason of being a quality not stipulated or being unfit for the purpose for which they are required, the Buyer shall have the right to reject such Services within a reasonable time of their performance and to purchase services elsewhere as near as practicable to the same specifications and conditions as circumstances shall permit but without prejudice to any other right which the Buyer may have against the Contractor.

Before exercising the right to purchase elsewhere the Buyer shall give the Contractor a reasonable opportunity to perform the Services in accordance with the Contract. The making of payment shall not prejudice the Buyer's right of rejection. Any inspection, checking, approval or acceptance given on behalf of the Buyer shall not relieve the Contractor or its sub-contractor from any obligation under the Contract.

## **8. Invoices and Payment**

The Buyer's payment terms are 30 days from receipt of a valid accurate invoice. The invoice must clearly show a valid Purchase Order number, along with any quotation or contract references. It must also show VAT separately and include the Contractor's VAT registration number and payment details. The Buyer prefers to pay its suppliers via BACS. The Contractor shall submit invoices in electronic PDF format where they meet regulatory guidelines to [payments@bath.ac.uk](mailto:payments@bath.ac.uk)

## **9. Loss or Damage**

The Contractor shall, without delay and at its own expense, reinstate, replace or make good to the satisfaction of the Buyer, or (if the Buyer agrees) compensate the Buyer for, any loss or damage suffered by the Buyer as a result of any act or omission of the Contractor in the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Buyer. 'Loss or damage' includes: loss or damage to property; personal injury to or the sickness or death of any person; loss of profits or loss of use suffered as a result of any loss or damage.

## **10. Insurance**

The Contractor shall hold all relevant insurances applicable to the Contract.

## **11. Warranty and indemnity**

The Contractor shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the period of warranty or in accordance with the Sale of Goods Act (as amended). This includes but is not limited to the Contractor's erroneous instructions as to use or erroneous use of data or inadequate or faulty materials or workmanship or any other breach of the Contractor's warranties expressed or implied. Repairs and replacement shall themselves be subject to the same warranty as the original Goods.

The Contractor shall indemnify the Buyer against all costs and damages for which the Buyer may become liable as a result any claim: (a) for infringement of any patent, registered design, design right, trade mark, copyright or any other intellectual property rights arising from the provision of the Goods and/or Services, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors; (b) made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with defects in the Goods or the Services, to the extent that these are attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors, or the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its employees, agents or subcontractors.

## **12. Sub-Contracting and Assignment**

The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Buyer's Head of Procurement. Where the Contractor enters into a contract with a supplier or sub-Contractor for the purpose of performing the Contract or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub-Contractor within a period not exceeding 30 days from receipt of a valid Invoice.

## **13. Health and Safety**

The Contractor shall ensure that any of its staff (or those of its subcontractor) who have access to or are employed on the Buyer's premises are made aware of and comply with the Buyer's Health and Safety and Security procedures and instructions at all times.

#### **14. Intellectual Property Rights**

Subject to any prior rights of the Contractor, and to the rights of third parties or of the Buyer arising otherwise than under this Contract, all Intellectual Property Rights, including copyright, resulting from this Contract shall vest in and be the absolute property of the Buyer.

Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer to the Contractor in connection with the Contract shall remain the property of the Buyer, and any information derived therefrom or otherwise communicated to the Contractor in connection with the Contract shall be kept secret and shall not, without the consent in writing of the Buyer, be published or disclosed to any third party, or made use of by the Contractor except for the purpose of implementing the Contract.

#### **15. Free Issue Materials**

Where the Buyer for the purposes of the Contract issues materials 'free of charge' to the Contractor such materials shall be and remain the property of the Buyer. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling patterns and the like, to fair wear and tear. The Contractor shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Buyer, the Contractor shall deliver up such materials whether further processed or not to the Buyer on demand.

#### **16. Trading Ethics**

The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person or company in relation to the Contract.

The Contractor shall take appropriate steps to ensure that neither the Contractor nor its staff are in a position where there is or may be an actual, or potential, conflict between the pecuniary or personal interests of the Contractor and/or its staff and the duties owed to the Buyer, including:

- (a) formal procedures to oblige all staff to declare any actual or potential personal or financial interest in any matter concerning the Contract, and to exclude any such staff from any discussion or decision-making relating to the Contract;
- (b) disclosure to the Buyer of full particulars of any such conflict of interest which may arise.

#### **17. Disclosure**

Any enquiry made of the Contractor concerning the Buyer or its contracts should be notified to the Head of Procurement at the Buyer.

#### **18. Environmental Requirements**

The Contractor shall supply the Goods or provide the Services in accordance with the Buyer's [Sustainability Policy](#), which is to conserve energy, water and other resources,

reduce waste, phase out the use of ozone-depleting substances and minimise the release of greenhouse gases, volatile organic compounds or any other substances damaging to health and the environment. Use of recycled packaging materials should be made wherever possible.

### **19. Hazardous Goods**

Hazardous Goods must be marked by the Contractor with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions labels or markings. The Contractor shall observe the requirements of UK and International agreements relating to the packing, labelling and carriage of Hazardous Goods. All information held by or reasonably available to the Contractor regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to the Buyer.

### **20. Force Majeure, Termination and Recovery of Sums**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control.

If a party is prevented from fulfilling its obligations under the Contract for more than 30 consecutive days, the other party may terminate the then unperformed portion of the Contract by notice in writing, without liability.

Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Buyer, the same may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other Contract with the Buyer.

The Buyer shall, in addition to its powers under these conditions, have the power to terminate the contract at any time by giving the Contractor written notice. The Buyer reserves the right to direct the Contractor to cease all work connected with the Contract. Where the Buyer has invoked either of these rights, the Contractor may claim "reasonable" costs necessarily and properly incurred, excluding loss of profit. For the avoidance of doubt the Contractor's claim under this condition may not exceed the total cost of the Contract.

### **21. Compliance with Laws**

In performing its obligations under the Contract, the Contractor shall comply with (a) all applicable laws, statutes and regulations from time to time in force, including UK GDPR, the Data Protection Act 2018, the Equality Act 2010, the Bribery Act 2010 and the Modern Slavery Act 2015, and any amendments, re-enactments or revisions of such laws, statutes and regulations; (b) the Buyer's policies as notified to the Contractor from time to time.

In accordance with the Modern Slavery Act 2015, the Buyer is committed to ensuring that there is no slavery or human trafficking in its supply chains or in any part of its business. The Contractor warrants that it has thoroughly investigated its labour practices and those of all its suppliers to ensure that there is no slavery or forced

labour used anywhere in its organisation or by any suppliers within its supply chains. The Contractor shall ensure that it complies with the requirements of the Modern Slavery Act 2015 and will provide evidence of compliance at the request of the University.

## **22. Freedom of Information Act (FOIA)**

The Contractor acknowledges that the Buyer is subject to the requirements of the FOIA and shall provide all necessary assistance and cooperation as is reasonably requested by the Buyer to enable it to comply with its obligations under the FOIA. Notwithstanding any other provision in the Contract, the Buyer shall be responsible for determining in its absolute discretion whether any information relating to the Contractor, the Goods or Services is exempt from disclosure in accordance with the FOIA.

## **23. Confidentiality**

23.1 Each party (the “receiving party”) hereby agrees and undertakes that during a period of 10 years from the date of the Contract it shall keep confidential and shall not without prior written consent of the other party (the “disclosing party”) disclose to any third party or use any confidential information of the disclosing party which may have been disclosed to it by the disclosing party in connection with the terms of this Contract ("Confidential Information"), provided always that such obligation of confidentiality shall not extend to all or any part of such Confidential Information which:

23.1.1 is or shall (otherwise than by reason of any default by the receiving party) become freely available to the general public; or

23.1.2 the receiving party can show by documentary evidence came into its possession or control from a third party free of any obligation of confidentiality and otherwise than by reason of any breach of any obligation of confidentiality by such third party.

23.2 The receiving party shall procure that any employee of the receiving party who shall obtain or shall have access to any Confidential Information of the disclosing party in connection with the performance of this Contract shall be bound by obligations of confidentiality substantially similar to the provisions of clause 23.1 and any such employee shall treat such Confidential Information with not less than the same degree of care that said employee uses in respect of the receiving party's Confidential Information. The receiving party shall ensure that such employee shall comply with the obligations of the receiving party under this Contract.

## **24. Miscellaneous**

No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

If any clause, sub-clause or other provision of the Contract is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Contract.

## **25. Equality and Diversity**

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate.