

# University of Worcester Standard Terms & Conditions

The supply of goods and services

## 1 DEFINITIONS

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

**‘Acceptance Date’** means the date on which the Authorised Officer has accepted the Goods or Goods and Services in accordance with Condition 19 below.

**‘Acceptance’** means Our Authorised Officer has accepted the Goods or Goods and Services as meeting the requirements of the Contract.

**‘Acceptance Certificate’** means the document issued by the Authorised Officer confirming that all acceptance tests specified for the Goods/Goods and Services have passed such tests and the date of such Acceptance.

**‘Agreement’** means a contract formed on behalf of University of Worcester which is accessible by third parties who in the case of such third parties use the Agreement only with the express permission of University of Worcester.

**‘Authorised Officer’** means Our employee authorised either generally or specifically by Us to sign Our Purchase Order, confirmation of which may be obtained from Our Registrar or Secretary or Director of Finance as applicable.

**‘Authorised’** means signed by one of Our Authorised Officers.

**‘Business Day’** means any day other than a Saturday or Sunday or a public or bank holiday in England.

**‘Contract Period’** means such period as set out in the Contract or as otherwise may be agreed between the parties from time to time.

**‘Contract’** has the meaning given in Condition 5 below.

**‘Data Breach’** means any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that Supplier Processes for and on behalf of The University (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes The University or Supplier to be in breach of data protection Law (in particular the General Data Protection Regulation).

**‘Data Controller’** has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning of "Controller" set out in the GDPR from 25 May 2018.

**‘Data Protection Particulars’** means, in relation to any Processing under this Agreement: (i) the subject matter and duration of the Processing; (ii) the nature and purpose of the Processing; (iii) the type of Personal Data being Processed; and (iiii) the categories of Data Subjects.

**‘Data Subject’** has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR.

**‘Delivery Date’** means the date specified in the Contract and/or confirmed by the Purchasing Order.

**‘Delivery Instructions’** means the instructions set out in the Contract for the provision of goods and Goods and Services, including any milestone events, and any other information We consider appropriate to the provision of the Goods and Services.

**‘DPA’** means the Data Protection Act 1998 and the rules and regulations made or having effect under it.

**‘Force Majeure’** shall mean any cause affecting the performance of Your obligations arising from acts, events, omissions, happenings or non-happenings beyond Your reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or Staff.

**‘GDPR’** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016.

**‘Good Industry Practice’** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of Goods and Services similar to the Goods and Services under the same or similar circumstances as those applicable to the Contract.

**‘Goods’** means the materials, articles, works and Goods and Services described in the Contract.

**‘Goods and Services’** means the Goods and Services described in the specification and set out in the Contract together with all equipment required and any allocated goods provided by the Contractor in relation to those Goods and Services.

**‘Installation’** means the installation of the Goods or Goods and Services in the designated location and into the operating environment specified by Us at the site and ‘Install’ shall be interpreted accordingly.

**‘Intellectual Property Rights’** means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

**‘Key Personnel’** means those persons named in the Contract and any replacement from time to time authorised by the Authorised Officer in accordance with the Contract.

**‘Liabilities’** means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

**‘Order Amendment’** means Our Authorised Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment.

**‘Package’** means any type of package including bags, cases, carboys, cylinders, drums, pallets, tanks, wagons and other containers.

**‘Personal Data’** has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR. For the purposes of this Agreement, Personal Data shall include Sensitive Personal Data.

**‘Premises’** means the location(s) where the Goods and/or Goods and Services are to be delivered or performed.

**‘Price’** has the meaning given in Condition 6 below.

**‘Processing’** has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018, and "Process" and "Processed" shall be construed accordingly.

**‘Processor’** has the meaning of "Data Processor" as set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018.

**‘Purchase Order’** means Our Authorised Purchase Order in the format set by Us having these general conditions of purchase on its reverse or attached to it or referring to these general conditions of purchase on its face.

**‘Replacement Contractor’** means any company, organisation or person who replaces the contractor following termination or expiry of all or part of this Contract.

**‘Sale of Goods Act 1979’** shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.

**‘Sensitive Personal Data’** means personal data that reveals such categories of data as are listing Article 9(1) of the GDPR

**‘Supply of Goods and Goods and Services Act 1982’** shall mean the Supply of Goods and Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

**‘Tender’** means a tender issued by the University of Worcester for the supply of Goods and Services to You.

**‘University of Worcester’** means the University of Worcester, its wholly owned subsidiaries UW Developments Ltd, UW Enterprises Ltd and UW Worcester Wolves Ltd, all registered at Henwick Grove, Worcester, WR2 6AJ.

**‘Warranty Goods and Services’** means such maintenance, repair and other Goods and Services that are required to be provided in order to reinstate the Goods and/or the Installation or any part thereof to the standards of performance, and/or to provide the Goods and Services to standards that are in accordance with and as detailed in the Contract.

**‘We’, ‘Us’, ‘Our’ and ‘The University’** means University of Worcester and any agreed third party placing a Purchase Order within the terms of this Contract. Third parties may use the Agreement only with the express permission of University of Worcester.

**‘You’ and ‘Your’** means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-contractor or agents of said person, firm or company.

**1.1** Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

**1.2** A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

## **2 HEADINGS**

**2.1** The index and headings to the Conditions and where applicable the appendices and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

## **3 NOTICES**

**3.1** Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or e-mail address notified to each other as set out in the Contract Particulars.

**3.2** Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was dispatched and any notice sent by e-mail before 5 p.m. will be deemed to have been served on the day of dispatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the next Business Day.

## **4 ENTIRE AGREEMENT**

**4.1** The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

## **5 THE CONTRACT**

**5.1** This Agreement is not a commitment to purchase by Us. Commitment to purchase will only be made when an Authorised Officer places a Purchase Order under the terms of this Agreement.

- 5.2** You agree to sell, and We agree to purchase the Goods and Services in accordance with the Contract. The Contract shall comprise (in order of precedence) any Purchase Order Amendments, the Purchase Order, these conditions of purchase and any other document (or part document) You have submitted as Your tender response. The Contract shall expressly exclude Your conditions of sale however these are purported by You to apply. Delivery of Goods and Services in response to a Purchase Order or Order Amendment shall be taken by Us that You have accepted the terms and conditions of this Contract.

## **6 PRICE**

- 6.1** You will sell Us the Goods and Services for the firm and unchangeable price stated in the Contract. If no price is stated in the Contract, then the price shall be a fair price, taking into account prevailing market conditions. We shall have the right to conduct price benchmarking and in the event that We find a lower price for the same quality Goods You will match such lower price. The price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

## **7 ACCOUNT MANAGEMENT**

- 7.1** You shall nominate an Agreement Manager who shall have sufficient authority to ensure that required service levels are met, to ensure sufficient resources are allocated to the Agreement, and to maintain performance to the Agreement Standard, to pro-actively co-ordinate and communicate relevant orders and to provide comprehensive support and links between You and Us. This must include sales support and information and advice on all Goods. The Agreement Manager shall be the prime contact between You and Us, and any notice, communication, information or instruction given or made to the Account Manager shall be deemed given to You. It shall be the responsibility of the Account Manager to ensure all staff involved in this Agreement are fully aware of obligations under this Agreement.
- 7.2** You shall appoint an Account Manager who shall be responsible for the provision of the Service to Us, to pro-actively co-ordinate relevant orders and to provide comprehensive support and links between You and Us. Our Authorised Officer shall be responsible for liaising with Your Account Manager to determine that Our requirements are met and to discuss and resolve matters relating to the Contract and Agreement. In the event that Your Account Manager and Our Authorised Officer are unable to reach agreement over any matter it shall, in the first instance, be referred for resolution.

## **8 VARIATION & SUBSTITUTION**

- 8.1** We shall have the right, before delivery, to send You an Order Amendment adding to, deleting or modifying the requirements. If the Order Amendment will cause a change to the price, delivery or service date then You must suspend performance of the Purchase Order and notify Us without delay, calculating the new price, delivery or service date at the same level of cost and profitability as the original price. You must allow Us at least ten (10) working days to consider any new price, delivery or service date. The Order Amendment shall take effect when, but only if, the Authorised Officer accepts in writing the revised price, delivery or service date within the time stipulated by You. If the Authorised Officer fails to confirm the

Order Amendment within the time stipulated then performance of the Agreement shall immediately resume as though the Order Amendment had not been issued, (except that we may still exercise right of cancellation in accordance with Condition 9).

- 8.2** You shall have the right to submit to Us a variation to the price after the first year of the contract where contract pricing is subject to fluctuating costs (for example fuel, wages, cost of materials) where these fluctuating costs have been advised in your tender submission. The variation should be submitted to Us in writing no less than 30 days before the proposed variation commences, notifying Us of the proposed variation in price, the proposed start date and a justification for the variation. The variation will only be valid if We have accepted it in writing. We are under no obligation to accept any variation to the price and if We choose to reject the proposed variation, We may terminate the Agreement, or any part thereof, giving You written notice of 30 days.
- 8.3** You shall not alter any of the requirements except as directed by Us but We shall have the right from time to time during the execution of the Contract, by written notice to direct You to add to or omit, or otherwise vary, the Goods or Services and You shall carry out such variations and be bound by the same Contract terms and conditions set out in this Contract so far as is applicable, as though the said variations were stated in the Contract. Where this variation to requirements reduces or increases the price, You should submit a price variation in accordance with condition 8.2.
- 8.4** You are expected to supply any Goods or Services for which You have tendered for in the Price Schedule unless amended by agreement. If You are unable to supply the exact type of Goods or Service requested You must inform Us, giving sound justification, before the delivery or service is due. If the reasons given are unacceptable, then You shall supply a product or service of similar or better quality and shall charge the Goods or Service supplied at the price of that originally ordered. Any substitution of Goods or Services is only to be introduced or given as a replacement with Our prior agreement.
- 8.4** If You fail to provide the Goods or Services at the agreed time, You shall make good such omissions within 24 hours, (or other agreed timescales), with the correct items or services, (or accepted substitutions at Our discretion), or We shall be entitled to obtain the Goods or Services elsewhere and You shall indemnify Us against all expenses arising from such a failure on Your part.

## **9 RIGHTS OF CANCELLATION**

- 9.1** In addition to Our rights of termination under this Contract We may cancel the Purchase Order and any Purchase Order Amendment thereto at any time by sending You in writing a notice of termination. You will comply with any such instructions that We may issue with regard to the Contract. If You submit a termination claim then We will consider such claim and will pay to You the cost of any commitments, liabilities or expenditure which in Our reasonable opinion were a direct consequence of this contract at the time of termination. Our opinion will take due account of Your obligation to mitigate any of Your losses so arising. Our maximum liability so arising shall not exceed the Price.
- 9.2** If You fail to submit a termination claim within one (1) month of the date of Our notice of termination then We shall have no further liability under the Contract.

## **10 INTELLECTUAL PROPERTY**

- 10.1** All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- 10.1.1** provided to You by Us shall remain Our property;
  - 10.1.2** prepared by or for You specifically for the use, in relation to the performance of the Contract shall belong to Us subject to any exceptions set out in the Contract Particulars.
- 10.2** You shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third-party Intellectual Property Rights. You shall procure that the owner of the Intellectual Property Rights grant to Us a non-exclusive licence, or if You are a licensee of those rights, You shall grant to Us an authorised sub-licence to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, or assign to the replacement contractor or to any other third-party providing Goods and Services to Us, and shall be granted at no cost to Us.
- 10.3** It is a Condition of this Contract that the Goods and Services will not infringe any Intellectual Property Rights of any third party and You shall during and after the Contract Period on written demand indemnify and keep Us indemnified without limitation against all Liabilities which We may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim relates to the act or omission of Us.
- 10.4** At the termination of the Contract You shall at the request of Us immediately return to Us all materials, work or records held in relation to the Goods and Services, including any back-up media.
- 10.5** Copyright in any reports or test results or other copyright work arising out of the Goods and Services done for the purposes of this Contract shall belong to Us, except to the extent that it contains pre-existing copyright belonging to You or third parties.
- 10.6** Subject to the terms of this Contract, all rights of third parties arising otherwise than by virtue of this Contract, including inventions and designs and business solutions shall rest in and be the property of Us.
- 10.7** You shall grant Us, or any third party or parties nominated by Us, a royalty-free perpetual, worldwide and non-exclusive licence in respect of any technical information (including but not limited to inventions, designs, drawings and business solutions whether or not patented and patentable) owned or controlled by You necessary to enable Us, or the said third party or parties, to use and exercise, and to manufacture use and sell articles or solutions embodying any of the information generated under this Contract. The grant if such a licence shall be to the extent that You have the right to do so.

## **11 CORPORATE REQUIREMENTS**

- 11.1** You shall comply with all obligations under the Human Rights Act 1998 or any subsequent re-enactment.



- 11.2** You shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 11.3** You shall comply with all relevant legislation relating to Your employees however employed including (but not limited to) the compliance in law of the ability of the employees to work in the United Kingdom.
- 11.4** You shall comply with all other applicable European and UK legislation relating to Human Rights, Disability, Equalities, Race Relations, Modern Slavery, Health and Safety or Employee Rights in force at the time of this Agreement including any subsequent amendment, alteration, or re-enactment.
- 11.5** You shall comply with all Our policies and rules, such as, but not limited to:
- 11.5.1** Equality and diversity policies
  - 11.5.2** Sustainability and Social Responsibility
  - 11.5.3** Information security rules
  - 11.5.4** Whistle-blowing and/or confidential reporting policies: and
  - 11.5.5** All site rules relevant to the fulfilment of Your obligations
- 11.6** If You have a finding against You relating to Your obligations under Conditions 11.1 - 11.5 inclusive You will provide Us with:
- 11.6.1** details of the finding; and
  - 11.6.2** the steps You have taken to remedy the situation.
- 11.7** You shall comply with WEE, RHOS, RRAA and all other applicable UK legislation.

## **12 FREEDOM OF INFORMATION & ENVIRONMENTAL REGULATIONS ACTS**

- 12.1** You acknowledge that the University of Worcester is subject to the requirements of the Freedom Of Information Act, (FOIA), and the Environmental Information Regulations (EIR), and You agree to assist and cooperate with Us (at Your expense) to enable Us to comply with these Information disclosure requirements.
- 12.2** You shall and shall procure that Your Sub-Contractors shall:
- 12.2.1** transfer any Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - 12.2.2** provide Us with a copy of all Information in Your possession or power in the form that We require within five Working Days (or such other period as We may specify) of Us requesting that Information; and
  - 12.2.3** provide all necessary assistance as reasonably requested by Us to enable Us to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- 12.3** We shall be responsible for determining at Our absolute discretion whether:-
- 12.3.1** the Information is exempt from disclosure under, the FOIA and the Environmental Information Regulations;

- 12.3.2** the Information is to be disclosed in response to a Request for Information, and in no event shall You or Your subcontractors respond directly to a Request for Information unless expressly authorised to do so by Us.
- 12.4** You acknowledge that We may, acting in accordance with the FOIA, or the Environmental Information Regulations be obliged to disclose Information:-
  - 12.4.1** without consulting with the You; or
  - 12.4.2** following consultation with You and having taken Your views into account.
- 12.5** You shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit Us to inspect such records as requested from time to time.
- 12.6** You acknowledge that any lists or schedules provided by You outlining Confidential Information are of indicative value only and that We may nevertheless be obliged to disclose Confidential Information in accordance with this Condition 12.

### **13 PUBLICITY**

- 13.1** You shall allow all relevant information relating to this Agreement to be published and distributed to Us on the Internet via secure websites. This information is confidential to Us. You should however be aware of obligations under the Freedom of Information Act.
- 13.2** Unless expressly permitted in writing by Us, You shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with this Agreement or the work of Us. This Condition shall not preclude Us and You from mutually agreeing to promotional or publicity initiatives regarding the supply of Goods and Services to Us.

### **14 PROPERTY AND RISK**

- 14.1** You shall bear all risks of loss or damage to the Goods until they have been delivered in accordance with Condition 17 herein and shall insure accordingly.
- 14.2** Ownership of the Goods shall pass to Us;
  - 14.2.1** when the Goods have been Delivered but without prejudice to Our right of rejection under this Contract, and
  - 14.2.2** if We make any stage payment in accordance with this Contract at the time such payment is made You must immediately mark the Goods as Our property.

### **15 INDEMNITY AND INSURANCE**

- 15.1** You will indemnify and keep Us indemnified fully in respect of and in connection with:
  - 15.1.1** all loss and/or expense by you which results from the provision of the Goods and Services, including advice and recommendations made, and accepted by Us and
  - 15.1.2** all loss and/or expense, and all actions, claims, demands, costs and expenses incurred by or made against Us which arises from any Installation and/or any Goods and Services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by You; and

- 15.1.3** all and any actions, claims, demands or costs in respect of the death or injury to any person arising from inappropriate advice and recommendations, defective materials, Goods, workmanship or design, or by reason of Your negligence, or any act or omission on the part of Your employees, sub-contractors, or agents in connection with the Contract; and
  - 15.1.4** any damage to Our property (including any materials, tools or patterns sent to You for any purpose).
  - 15.1.5** The Supplier agrees to indemnify and keep indemnified and defend at its own expense The University against all costs, claims, damages or expenses incurred by The University or for which The University may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Clause.
  - 15.1.6** Any breach of the Modern Slavery Act 2015
- 15.2** You must take out and maintain insurance adequate to cover the risks set out in this Condition and Your liabilities under the Contract and in any event shall take out and maintain:
- 15.2.1** Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
  - 15.2.2** Professional Indemnity Insurance coverage for a period from the date of this Contract to a date of not less than six (6) years from the date of this Contract of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and
  - 15.2.3** Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise.
  - 15.2.4** Employer Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or a series of claims that may arise.
- 15.3** You will take out and maintain such insurances as set out in this Condition 15 with a reputable insurance company and shall at Our request provide evidence of the insurance policy or policies and of payment of the premiums. Your failure to maintain such insurances shall be treated as a material breach of the Contract and shall give Us the right to terminate the Contract in accordance with Condition 43.
- 15.4** This Condition sets out Our entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Supplier in respect of any failure of Us to abide by applicable regulation or legislation or other legal requirement in respect of the process leading to the Tender and any Direct Award or Mini Tender and the formation of this Agreement; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 15.4.1** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
  - 15.4.2** Nothing in this agreement limits or excludes Our liability:
    - 15.4.2.1** for death or personal injury resulting from Our negligence; or
    - 15.4.2.2** for any damage or liability incurred by the Supplier as a result of fraud or fraudulent misrepresentation by Us
  - 15.4.3** We shall not be liable for:

- 15.4.3.1** loss of profits; or
- 15.4.3.2** loss of business; or
- 15.4.3.3** depletion of goodwill and/or similar losses; or
- 15.4.3.4** loss of anticipated savings; or
- 15.4.3.5** loss of contract; or
- 15.4.3.6** loss due to corruption of data; or
- 15.4.3.7** any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 15.4.4** Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement or in respect of any correspondence between the parties leading to the submission of the Tender, a Direct Award or any Mini Tender shall be limited to and shall not exceed £10,000.

## **16 PROGRESS AND INSPECTION**

- 16.1** You shall at Your expense provide any programmes for the provision of the Goods and Services delivery that We may reasonably require.
- 16.2** You shall notify Us, in writing, without delay if Your progress falls behind or may fall behind any of these programmes.
- 16.3** We shall have the right to check progress at Your offices (including home working) or the offices (including home working) of Your sub-contractors at all reasonable times to inspect and to reject Goods and Services that do not comply with the Contract. Your sub-contracts shall reserve such rights for Us.
- 16.4** Any inspection or approval shall not relieve You from Your obligations under this Contract.

## **17 DELIVERY AND PACKAGING**

- 17.1** The Goods shall be delivered in accordance with any delivery instructions. If no time for delivery is stated in the delivery instructions Goods shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- 17.2** The time of the delivery of the Goods is of the essence to the Contract.
- 17.3** Where the Goods are delivered by You, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the delivery instructions. Where the Goods are collected by Us from You, the point of delivery shall be when they are loaded onto Our vehicle.
- 17.4** Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by You at such places We may direct in the Contract.
- 17.5** The issue by Us of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. We shall not be deemed to have accepted any Goods until We have had reasonable time after any latent defect in the Goods has become apparent.

- 17.6** All Goods must be properly packaged to survive transit without damage, clearly and legibly labeled and addressed. We will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that You require returning will be done so at Your cost and risk.
- 17.7** You shall be obliged by statute to comply with any specific labelling requirements for goods in transit.
- 17.8** Unless expressly agreed to the contrary, We shall not be obliged to accept delivery by installments. If We do not specify or agree to delivery by installments, delivery of any one installment not in accordance with the delivery instructions shall without prejudice to any other rights or remedies of Us, entitle Us to terminate the whole of any unfulfilled part of the Contract without further liability to You.
- 17.9** If You at any time become aware of any act or omission, or proposed act or omission by Us which prevents or hinders or may prevent or hinder You from supplying the Goods in accordance with the Contract, You shall inform, in writing, Us.
- 17.10** We retain You for the supply of Goods on a non-exclusive basis unless stated otherwise in the Contract.

## **18 LATE DELIVERY**

- 18.1** If the Goods or Services or any part of them are not delivered within the agreed timescales of the Contract then We retain the option to cancel any undelivered balance of the Goods or Services. We also retain the option to return for full credit and at Your expense any Goods which in Our opinion cannot be used owing to this cancellation.

## **19 ACCEPTANCE**

- 19.1** We shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform to the requirements of this Contract. It is agreed that We may exercise the right of rejection notwithstanding any provision contained in section 11 or section 15A or section 30 (subsections 2A and 2B) or section 35 of the Sale of Goods Act 1979. We shall give You a reasonable opportunity to replace the Goods with new Goods that conform to the Contract, after which time, We shall be entitled to cancel the Contract and purchase the nearest equivalent Goods elsewhere. In the event of cancellation under this Condition You shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the Contract under this Condition shall not affect any other rights We may have. You must collect all rejected Goods within a reasonable time of rejection, or We shall return them to You at Your risk and expense.

## **20 PERFORMANCE**

- 20.1** The services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9am and 5pm on a Business Day.

**20.2** The time of the delivery of the Services is of the essence to the Contract.

**20.3** We retain You for the performance of the Services on a non exclusive basis

**20.4** If You at any time become aware of any material matter that could affect the performance of the Services in accordance with The Contract You shall inform Us immediately in writing.

**20.5** If You at any time become aware of any act or omission, or proposed act or omission, by Us which prevents or hinders or may prevent or hinder You from performing the Services in accordance with the Contract You shall inform us in writing and We may, at its absolute discretion, extend the period of The Contract accordingly.

## **21 COMPLETION OF SERVICES**

**21.1** You shall advise Us in writing when the Service is completed. Provided the Service has been completed satisfactorily for Us in accordance with the terms and conditions of the Contract We shall give you an Acceptance Certificate, or else We shall inform You in writing of Our reasons for not accepting the Service.

**21.2** Until We have accepted the Service in the manner aforementioned, the Service shall not be considered accepted either in whole or in part. Neither partial payments made during the performance of the Service, nor the presence of Our representative during the course of the Service, shall constitute acceptance of the Service of or any part of the Service.

## **22 PAYMENT**

**22.1** We shall pay the Price for the Goods and Services to You.

**22.2** You shall unless otherwise instructed submit a VAT invoice to Us no later than seven (7) calendar days after the end of each calendar month detailing the Goods and Services provided during the calendar month and the amount payable.

**22.3** Payment of any undisputed invoice will be made within 30 days of receipt of the invoice.

**22.4** We reserve the right to withhold payment of the relevant part of the Price without payment of interest, where You have either failed to deliver the Goods and Services at all or have delivered Goods and Services which in Our reasonable opinion are unsatisfactory and any invoice relating to such Goods and Services will not be paid unless or until the Goods and Services have been delivered to Our satisfaction.

**22.5** We will be entitled but not obliged at any time or times without notice to You to set off any liability of Ours to You against any liability of You to Us and may for such purpose convert or exchange any sums owing to You into any currency or currencies in which Our obligations are payable under this Contract. Our rights under this Condition will be without prejudice to any other rights or remedies available to Us under this Contract or otherwise.

## **23 CONSUMABLE SUPPLIES**

- 23.1** We reserve the right to procure consumable supplies to be used on or with the Goods or Services, and suitable for the Goods or Services from You or such other source as We deem appropriate. Such procurement of consumables from a source other than You shall not invalidate Our rights under these General Conditions of Contract, and shall in no way affect the provisions in respect of warranty claims made in accordance with Condition 26 nor Our rights under this Condition provided that the consumables utilised meet the minimum standards as published by You or the manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods or Services concerned.
- 23.2** In the event that You shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods or Services and/or increasing the cost to You of meeting Your obligations to provide Warranty Services it shall be for You to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods or services and/or increasing Your costs as set out above. If You shall prove that the consumables do not meet the requisite minimum standards, We shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

## **24 MAINTENANCE**

- 24.1** If required by Us before the end of the Warranty Period You shall enter into a separate contract for the maintenance of the Goods.
- 24.2** If a maintenance contract commences before the end of the Warranty Period the maintenance charges during the Warranty Period shall reflect Your obligations under Condition 26.

## **25 SPARES**

- 25.1** Where appropriate to the Goods supplied in accordance with this Contract, You shall make available to Us, or any nominated third party maintenance source, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts as We, or nominated third party maintenance source shall require for the Goods.
- 25.2** You shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of delivery or the Acceptance Date, whichever is the latest.
- 25.3** Such spares or replacement parts shall be required to be fully compatible with and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.
- 25.4** If during the period set out in Condition 25.2 You or Your sub-contractor intend to discontinue the manufacture of spares or replacement parts for the Goods You shall forthwith give notice to Us of such intention and advise Us of any third party source from which the spares or replacement parts will be available, or to which third party source You intend to provide drawings, patterns, specifications and other information.
- 25.5** If during the stipulated period set out in Condition 25.2 You or Your sub-contractor either:

- 25.5.1** fails to make available to Us, or any nominated third-party maintenance service provider, with reasonable dispatch, at reasonable prices all such spares or replacement parts as We or nominated third party maintenance source shall require for the Goods; or
- 25.5.2** becomes insolvent or has a receiving order made against them or commences to be wound up (not being a member's winding up for the purposes of reconstruction) then You shall so far as it is legally entitled to do so and if so required by Us as soon as practicable deliver to Us or Our nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in Condition 25.4 and which We or Our nominated third party source shall be entitled to retain for such time only as necessary for the exercise by Us of Our rights under this Condition 25.4 and which if You so require shall be returned by Us to You at Our cost and expense.

## **26 WARRANTY**

### **26.1** You warrant to Us that that the Services will be provided:

- 26.1.1** in a proper, skilful and workmanlike manner.
- 26.1.2** by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice
- 26.1.3** in accordance with the Contract and any descriptions provided by You that are also set out in the Contract.
- 26.1.4** to the reasonable satisfaction of the Authorised Officer.
- 26.1.5** by Key Personnel (if any) who shall not be released from providing the services permanently with Our agreement, except for reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by Us, or the element of the Service in respect of which the individual was engaged has been complete to Our satisfaction or other extenuating circumstances explained to Us. Any replacements for the Key Personnel shall be subject to the agreement of Us and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by You; and
- 26.1.6** in a way that You take every reasonable precaution to safeguard Our property entrusted to your care.

### **26.2** You warrant that the Goods will be:

- 26.2.1** of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the Specification or held out by You; and
- 26.2.2** new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship; and



- 26.2.3** provided in accordance with the Contract, correspond to the specification and any drawings, samples or descriptions provided by You; and
  - 26.2.4** so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
  - 26.2.5** free from asbestos content unless specifically required under the Contract.
  - 26.2.6** comply with all current legislation.
  - 26.2.7** be fit for any purpose made known to You expressly or by implication and in this respect, We rely on Your skill and judgement.
  - 26.2.8** You warrant that to the extent that associated Services are performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice
- 26.3** You warrant to Us that to the extent that any Goods, equipment or consumables are provided as part of the Services they will:
- 26.3.1** be free from defects in design, material and workmanship; and
  - 26.3.2** be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and safety.
- 26.4** Without prejudice to Our rights to terminate under Condition 45 if any of the Goods or Services supplied are not in accordance with the Contract we shall be entitled to
- 26.4.1** require You to provide replacement Goods or Services in accordance with the Contract as soon as reasonably practicable and in event within ten (10) Business Days of a request to do so; or
  - 26.4.2** subject to Condition 15 require repayment of the proportion of the Price which has been paid in respect of such Goods or Services together with payment of any additional expenditure over and above the Price reasonably incurred by Us in obtaining replacement Goods or Services.
- 26.5** You further warrant that You will make good at Your expense any defect in the Goods that We discover under proper usage during the first twelve months of actual use or 18 months from the date of acceptance by Us whichever period shall expire first. Such defects may arise due to Your faulty design, Your erroneous instructions as to the use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law.
- 26.6** Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by Us.

## **27 OPERATING MANUALS**

- 27.1** You shall supply to Us all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation so required. If after the Acceptance Date the operating manuals and documentation need updating or replacing You shall be responsible for notifying Us of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of Our written instructions. You shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.
- 27.2** You shall supply to Us all operating manuals and other documentation necessary for the satisfactory operation of the Goods in the language requested by Us, if no such request is made at the time of ordering, then the language required shall be English.

## **28 ATTACHMENT TO THE GOODS**

- 28.1** We shall have the right to attach to, or install into or onto the Goods any Goods (including but not limited to software) which We consider to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by Us, If We attach or install goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve You from meeting Your obligations to provide Warranty Services in accordance with Condition 26 or replacement goods in accordance with Condition 23 hereof provided that:-
- 28.1.1** the goods attached or installed are not specified in any of Your and/or the Manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating Our rights under Conditions 26 and 23 as aforesaid;
  - 28.1.2** You have not otherwise notified Us in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate Our rights under Conditions 26 and 23 as aforesaid; and
  - 28.1.3** The goods have been attached or installed in accordance with the published instructions of You.
- 28.2** In the event that the attachments and/or installation is made by Us and You can prove that such attachment or installation is adversely affecting the standard of performance of the Goods or otherwise increasing the frequency of the provision of the Warranty Services then You shall be entitled to be reimbursed any associated direct costs which You can demonstrate as being reasonably and necessarily incurred in providing Warranty Services or returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or installation being made by Us (other than where such attachment or installation has been with the approval of You).

## **29 TRAINING**

- 29.1** Where appropriate, the Contract Price shall include the cost of instruction of Our personnel in the use of the Goods, such instructions shall be in accordance with the requirements of the Contract.

## **30 HAZARDOUS GOODS AND SAFETY**

- 30.1** Where the Goods comprise or include substances hazardous to health, You will supply to Us on or before delivery with all data necessary to allow Us to form a suitable and sufficient assessment of the attendant risks and of the steps which need to be taken in order to meet the requirements of all relevant Statutory Regulations.
- 30.2** You 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 and all provisions relating to food.

## **31 ASSIGNMENT AND SUB-CONTRACTING**

- 31.1** The Contract shall not be assigned by You nor sub-contracted as a whole and You shall not sub-contract any part of the Contract without Our written consent, but We shall not refuse such consent unreasonably. The restriction contained in this Condition shall not apply to sub-contracts for materials, minor details or for any part of which the makers are named in the Contract. You shall be responsible for all work done and Goods supplied by all Your sub-contractors.

## **32 WORK ON OUR PREMISES**

- 32.1** If the Contract involves any Goods and Services which You perform on Our premises then the following Conditions shall apply:
- 32.1.1** You shall ensure that You and Your employees, Your sub-contractors and their employees and any other persons associated with You will adhere in every respect to the obligations imposed upon You by current safety legislation.
  - 32.1.2** You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You will comply with any regulations that We may notify to You in writing.
  - 32.1.3** When required, You and Your employees, Your sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving Our site(s). We reserve the right to remove from site anyone suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 32.2** You shall make no delivery of materials, plant or other things nor commence any work on Our premises without obtaining Our prior consent.
- 32.3** Access to Our premises shall not be exclusive to You but only such as shall enable the performance of the Contract concurrently with the execution of work by others. You shall co-operate with such others as We may reasonably require.
- 32.4** We shall have the power at any time during the progress of the Contract to order in writing:
- 32.4.1** the removal from Our premises of any materials which in Our opinion are either hazardous, noxious or not in accordance with the Contract, and/or;
  - 32.4.2** the substitution of proper and suitable materials, and/or;
  - 32.4.3** the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods and Services which, in respect or material or workmanship, is not in Our opinion in accordance with the Contract.
- 32.5** On completion of the Contract You shall remove Your plant, equipment and unused materials and shall clear away from Our premises all rubbish arising out of the Contract and leave Our premises in a neat and tidy condition within the timescales instructed to You by Us.
- 32.6** You shall ensure that You and Your employees, Your sub-contractors and their employees and any other persons associated with You shall be dressed appropriately. We reserve the right to remove from site anyone who is, in Our absolute discretion, not complying with this requirement.

### **33 LICENCE TO OCCUPY PREMISES**

- 33.1** Any land or Premises made available from time to time to You by Us in connection with the Contract, shall be made available to You on a non-exclusive licence basis free of charge and shall be used by You solely in the purpose of performing its obligation under the Contract. You shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 33.2** You shall limit access to the land or Premise to such personnel as is necessary to enable it to perform its obligations under the Contract and You shall co-operate (and ensure it personnel co-operate) with such other persons working concurrently on such land or Premises as We may reasonably request.
- 33.3** You agree that there is no intention on Our part to create a tenancy of any nature whatsoever in favour of You or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, We retain the right at any time to use any Premises owned or occupied by Us in any manner We see fit.

### **34 ARTICLES ON LOAN AND USE OF INFORMATION**

- 34.1** All tools, materials, drawings, specifications and other equipment and data (the Articles) loaned by Us to You in connection with the Contract shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of any of the Articles will be made without the consent in writing of Our Authorised Officer. Until You return all the Articles to Us they shall be at Your risk and insured by You at Your expense against the risk of loss, damage or theft. Any loss of or damage to such Articles shall be made good by You at Your expense. All scrap arising from the supply of such Articles must be disposed of at Our discretion and all proceeds of sales of such scrap must promptly be paid to Us.

### **35 YOUR EMPLOYEES**

- 35.1** We reserve the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of Us:
- 35.1.1** any member of Your employees; and/or
  - 35.1.2** any person employed or engaged by a sub contractor, agent or servant of Yours whose admission or continued presence would be, in the reasonable opinion of Us, undesirable.
- 35.2** When directed by Us, You shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of Us, specifying the capacities in which they are concerned with the Contract and giving such other particulars as We may reasonably require.
- 35.3** Your employees and those (if any) of Your sub-contractors or agents engaged within the boundaries of any of our premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment, and when outside that establishment.

**35.4** Our decision as to whether any person is to be refused access to any premises occupied by or on behalf of Us shall be final and conclusive.

**35.5** You shall replace any of Your employees who, we have reasonably decided, have failed to carry out their duties with reasonable skill and care. Following the removal of any of Your employees for any reason, You shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Goods and Services.

**35.6** You shall bear the cost of or costs arising from any notice, instructions or decision of Us under this Condition.

## **36 LEGITIMACY OF THE WORKFORCE**

**36.1** You shall take all reasonable steps to ensure that any employees, servants or agents of You and any sub-contractors, their employees, servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any benefit payable to persons registered as unemployed.

## **37 TUPE AND RE-TENDERING**

**37.1** In the event of expiry or termination of this Contract or whenever reasonably requested by Us in preparation for tendering arrangements You will provide Us with such assistance as we may require and provide at no cost to Us any information We (whether on its own account or on behalf of any potential or confirmed replacement contractors) may request in relation to the employees including, but not limited to, providing employee liability information as required under Regulation II of TUPE.

**37.2** You authorise Us to pass any information supplied to any replacement contractor or potential replacement contractor and You will secure all necessary consents from relevant employees in order to do this.

**37.3** You will keep Us and any replacement contractor indemnified in full against all liabilities arising directly or indirectly in connection with any breach of this Condition or inaccuracies in or omissions from the information provided.

## **38 NON SOLICITATION AND OFFERS OF EMPLOYMENT**

**38.1** You agree that You will not, without the prior written consent of Us, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Contract period or for a period of 12 months following termination of this Contract:

**38.1.1** Solicit or entice, or endeavour to solicit or entice, away from Us, any person directly related to the Goods and Services employed in a senior capacity, in a managerial, supervisory, technical sales or administrative capacity by, or who is or was a

- consultant to Us at the date of termination of this Contract or at any time during the period of three (3) months immediately preceding the date of termination; or
- 38.1.2** attempt or knowingly assist or procure any other person to do the above.

### **39 CHARGES FOR YOUR STAFF PROVIDING GOODS AND SERVICES**

- 39.1** Your hourly, daily, weekly or other agreed duration basis of charges for personnel engaged in providing the Goods and Services, including those of your sub-contractors shall remain firm and unchangeable throughout the Contract period. For the avoidance of doubt if within the contract period such personnel are promoted to more senior positions this will not permit You to revise Your basis of charging to Us.

### **40 OFFSITE PROVISIONS OF GOODS AND SERVICES**

- 40.1** We recognise that some or all of the Goods and Services may be provided from a site or sites (including home working) of You and for your appointed sub-contractor or sub-contractors. In all circumstances where Goods and Services or part of the Goods and Services are provided from such site or sites You shall comply with the following requirements:
- 40.1.1** give the Authorised Officer a minimum of one (1) weeks written notification that off-site working will take place, setting out the reasons for such working, personnel resources (including name, position and role) used and the specific outputs to be delivered by each of the personnel
  - 40.1.2** facilitate the Authorised Officer to contact each of the personnel and/or Your Supervising Officer, including but not restricted to, telephone number and/or e-mail addresses for the purpose of ascertaining that the Goods and Services are being provided.
  - 40.1.3** ensure that all invoices submitted have signed and authorised daily approval sheets confirming the details as 40.1.2 above
  - 40.1.4** give the Authorised Officer or his nominee a right to inspect, test, examine any methods, schedules, calculations, analysis, materials, equipment, reports, working documents used or to be used in connection with the performance of the Service.
- 40.2** Your failure to comply with the terms of this Condition shall give us the right not to pay for the Goods and Services provided off-site
- 40.3** Neither failure of Us to inspect nor failure to discover or reject any portion of faulty Service shall be deemed to imply acceptance thereof or in any way relieve You from its responsibilities according to this Contract.

### **41 YOUR INSOLVENCY AND/OR CHANGE OF OWNERSHIP**

- 41.1** If You become insolvent or bankrupt or (being a Company) make an arrangement with Your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purpose of amalgamation or reconstruction) We may without replacing or reducing any other of Our rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

- 41.2** If the ownership of Your Company changes during the period of the Contract, then We may without replacing or reducing any other rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

## **42 TERMINATION ON CHANGE OF CONTROL OR INSOLVENCY**

- 42.1** We may terminate the Contract by written notice having immediate effect if:
- 42.1.1** You undergo a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
  - 42.1.2** Where You are an individual or a firm You or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
  - 42.1.3** Where You are a company, You pass a resolution or the Court makes an order that You be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of Your business or any part of it; or You are unable to pay Your debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 42.2** We may only exercise Our right under Condition 42.1.1 within six (6) months after a change of control occurs and shall not be permitted to do so where it has been agreed in advance to a particular change of control that occurs. You shall notify Us immediately when any change of control occurs.

## **43 TERMINATION FOR REASONS OTHER THAN CHANGE OF CONTROL OR INSOLVENCY**

- 43.1** We may terminate the Contract with immediate effect by notice in writing to You on or at any time if in addition to Our rights under Condition 42:
- 43.1.1** You are convicted of a criminal offence; or
  - 43.1.2** You cease or threaten to cease to carry on Your business; or
  - 43.1.3** There is genuine belief that there is a risk that reputational damage to Us will occur as a result of the Contract continuing; or
  - 43.1.4** You are in breach of any of Your obligations under this Contract that is capable of remedy and which has not been remedied to Our complete satisfaction within ten (10) days or such other reasonable period as may be specified by Us after issue of a written notice specifying the breach and requesting it to be remedied; or
  - 43.1.5** There is a material or substantial breach by You of any of Your obligations under this Contract which is incapable of remedy; or
  - 43.1.6** You commit persistent minor breaches of this Contract, whether remedied or not.
  - 43.1.7** This Contract has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
  - 43.1.8** You were, at the time when this Contract was awarded, in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as



a result of the application of regulation 57(2), and therefore should not have been awarded this Contract;

**43.2** We reserve the right to terminate the Contract in part in the case of termination under Conditions 43.1.4, 43.1.5 and 43.1.6.

**43.3** We reserve the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that We will give as much notice as possible in the circumstances.

#### **44 CONSEQUENCES OF TERMINATION**

**44.1** If this Contract is terminated in whole or in part We shall:

**44.1.1** be liable to pay to You only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

**44.1.2** except for termination under Condition 43.3 be entitled to deduct from any sum or sums which would have been due from Us to You under this Contract or any other Contract and to recover the same from You as a debt any sum in respect of any loss or damage to Us resulting from or arising out of termination of this Contract. Such loss or damage shall include the reasonable cost to Us of the time spent by Our officers and advertisers in terminating the Contract and in making alternative arrangements for the supply of Goods and Services or any part of them; and/or

**44.1.3** where termination arises under Condition 43.3 pay to You any reasonable direct and quantifiable costs reasonably incurred by You due to early termination subject to Our maximum liability provision in Condition 15; and/or

**44.1.4** in the event that any sum of money owed by You to Us (Your debt) exceeds any sum of money owed by Us to You (Our debt) under this Contract then We shall, at Our sole discretion, be entitled to deduct Your debt from any of Our future debt or to recover Your debt as a civil debt.

**44.2** Upon termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have been accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

#### **45 DISPUTE RESOLUTION**

**45.1** If any dispute or difference shall arise between the parties in connection with or arising out of the Contract then either party may give the other seven (7) calendar days notice to resolve the dispute or difference through an Alternative Dispute Resolution (ADR) procedure as recommended by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within fifty-six (56) calendar days of such notice having been received, or if the other party will not participate in the ADR procedure, then the dispute or difference shall be referred to Arbitration in accordance with Condition 45.2 below.

**45.2** If any dispute or difference which may arise between You and Us in connection with or arising out of the Contract is under Condition 45.1 is to be referred to ADR but is not so resolved as specified in Condition 45.1 then either party shall give to the other ten (10) business days written notice to that effect and such dispute or difference shall be referred to a single



Arbitrator agreed between the parties within ten (10) business days after the date of the said written notice or in default of agreement as may be nominated by the president for the time being of the Chartered Institute of Arbitrators.

#### **46 FORCE MAJEURE**

- 46.1** For the avoidance of doubt, any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement.
- 46.2** Neither You or Us in any circumstances shall be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by You by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, You shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 46.3** If You become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on Your part, You shall forthwith notify Us by the most expeditious method then available and You shall inform Us of the period which it is estimated that such failure or delay shall continue.
- 46.4** It is expressly agreed that any failure by You to perform or any delay in performing Your obligations under this Agreement which results in failure or delay in the performance of Your obligations by any person, firm or company with which You have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of Force Majeure.

#### **47 LAW**

- 47.1** You shall comply at all times with the Law in Your performance of the Contract.
- 47.2** On the occurrence of a change in law which has a direct effect upon the Price the parties shall meet within ten (10) business days of You notifying Us of the change in law to consult and seek to agree the effect of the change in law and change in the Price as a result following the principle that this Condition is not intended to create an artificial cushion from market forces for You. If the parties, within ten (10) business days of this meeting have not agreed the occurrence or the impact of the change in law, either party may refer the matter to dispute resolution in accordance with Condition 45.
- 47.3** Any agreed additional sums payable as a result of the operation of this Condition shall be included in the Price. For the avoidance of doubt nothing in this Contract will permit You double recovery of any increase in Your costs.
- 47.4** This Contract shall be subject to English Law and the jurisdiction of the English courts or the Law of the Country and their courts in which the buyer's main address is located.

## **48 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

- 48.1** Any organisation named in the Contract shall be entitled to enforce any term of this agreement, the benefit of which is expressly conferred upon any such organisation and may be enforced by such organisation pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject as aforesaid, this agreement is not intended to confer any rights on any other third party pursuant to the said 1999 Act.

## **49 WAIVER**

- 49.1** A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

## **50 E-PROCUREMENT**

- 50.1** You shall, where practicable, provide a catalogue of all Goods and/or services that are covered under this Contract. This catalogue shall be provided in an MS Excel Format and as a minimum shall include Part Number, UNSPSC code ([www.unspsc.org](http://www.unspsc.org)), Manufacturer's Name, Full Product/Service Description, Unit of Sale, VAT rate and Price per unit, UNSPSC code ([www.unspsc.org](http://www.unspsc.org)). This will be hosted on Our Parabilis Purchase to Pay (P2P) system and any future P2P software or e-procurement system We may use.
- 50.2** During the period of this Contract You shall be responsible for maintaining the currency of Your catalogue and providing any updates in a timely manner.

## **51 ANTI-BRIBERY AND ANTI-CORRUPTION**

- 51.1** You the Supplier shall:
- 51.1.1** comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');
  - 51.1.2** not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 51.1.3** have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
  - 51.1.4** immediately notify the University of Worcester if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
  - 51.1.5** ensure that all persons associated with the Supplier or other persons who are performing services in connection with this agreement comply with this Condition; and

- 51.2** For the purpose of this Condition, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of Condition, a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.
- 51.3** In connection with this or any other Contract between You and Us You shall not give, provide, or offer to Our staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of Condition We shall without prejudice to any other rights We may possess, be at liberty forthwith to terminate this and any other Contract and to recover from You any loss or damage resulting from such termination.
- 51.4** In the event of any breach of Condition by the Supplier or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Supplier):
- 51.4.1** the Supplier shall immediately give Us full details of any such breach and shall co-operate fully with Us in disclosing information and documents which We may request; and/or
  - 51.4.2** We shall (without prejudice to any of its rights or remedies under this agreement or otherwise) be entitled by notice in writing to terminate this agreement immediately; and
  - 51.4.3** the Supplier shall be liable for and shall indemnify and keep the University of Worcester indemnified in respect of any and all loss resulting from such termination.
- 51.5** In any dispute, difference or question arising in respect of:
- 51.5.1** the interpretation of Condition; or
  - 51.5.2** the right of the University of Worcester to terminate this agreement; or
  - 51.5.3** the amount or value of any gift, consideration or commission

the decision of the University of Worcester shall be final and conclusive.

## **52 THE SERVICES**

- 52.1** You shall supply the services during the contract period in accordance with Our requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Price. We reserve the right to inspect and examine the manner in which You supply the Services whether on or off our premises during the business hours specified in the Contract.
- 52.2** If We inform You in writing that We reasonably believe that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a default by Us, You shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by Us.

## **53. DATA PROTECTION**

- 53.1** The parties acknowledge that The University is the Data Controller, and the Supplier is the Processor. The only Processing of Personal Data that the Supplier is authorised to do should be agreed in writing with the University before such processing takes place.
- 53.2** The Supplier shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with The University's written instructions from time to time and shall not Process Personal Data for any other purpose. If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Clause, immediately inform The University of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law).
- 53.3** The Supplier shall provide all reasonable assistance to The University in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of The University, include:
- 53.3.1** a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 53.3.2** an assessment of the necessity and proportionality of the Processing operations in relation to the Specification;
  - 53.3.3** an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 53.3.4** the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 53.4** The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the EEA except with The University's prior written consent and where such consent is given, take such actions and enter into such agreements as The University may require to ensure that such transfer or disclosure complies with Law.
- 53.5** The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 53.6** The Supplier shall not disclose Personal Data to any person except under this Agreement or without the University's written consent.
- 53.7** The Supplier shall ensure that access to Personal Data is limited to:
- 53.7.1** those employees who need access to Personal Data to meet the Supplier's obligations under this Contract; and
  - 53.7.2** in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.
- 53.8** The Supplier shall ensure that employees that require access to Personal Data:
- 53.8.1** are informed of the confidential nature of Personal Data;
  - 53.8.2** have undertaken training in Law relating to handling Personal Data; and
  - 53.8.3** are aware both of the Supplier's duties and their personal duties and obligations under Law and this Contract.
- 53.9** The Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.

- 53.10** The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of The University or as provided for in this Contract.
- 53.11** The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data that have been reviewed and approved by The University as appropriate having taken account of the:
- 53.11.1** nature of the Personal Data to be protected;
  - 53.11.2** harm that might result from a Data Breach;
  - 53.11.3** state of technological development; and
  - 53.11.4** cost of implementing any measures.
- Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.
- 53.12** The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify The University of any Data Breach and shall work together with The University to provide The University with full co-operation and assistance, including to investigate the Data Breach (including by (i) assisting with any investigation launched by The University; (ii) facilitating interviews with the Supplier's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by The University to investigate the Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Data Breach or its investigation).
- 53.13** The Supplier shall not engage another Processor to Process Personal Data except with The University's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Clause on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Clause.
- 53.14** The Supplier shall assist and fully co-operate with The University to enable it to comply with its obligations as a Data Controller under and in accordance with Law including in relation to the security of Processing, data subject right requests, reporting personal Data Breaches to the supervisory authority and conducting data privacy impact assessments. The Supplier shall notify The University within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract.
- 53.15** The Supplier shall promptly comply with any request from The University requiring the Supplier to amend, transfer or delete Personal Data. At The University's request, the Supplier shall provide to The University a copy of all Personal Data held by it in the format and on the media reasonably specified by The University.
- 53.16** The Supplier shall at any time on the request of The University, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on

behalf of The University) to The University and/or permanently delete the same from its systems, including any back-up copies.

- 53.17** The Supplier shall at The University's option, delete or return to The University all Personal Data on termination of the Agreement and delete any existing copies of Personal Data except to the extent that The University is required to retain Personal Data by Law.
- 53.18** The Supplier shall make available to The University all information necessary to demonstrate our compliance with the obligations under this Clause and allow for and contribute to audits, including inspections, conducted by The University or another auditor mandated by the University.
- 53.19** The Supplier shall immediately inform The University if, in its opinion, an instruction from The University infringes Law.
- 53.20** The Supplier shall, in connection with this Agreement, comply in all respects with Law relating to data protection and have established procedures to ensure continued compliance with Law. The Supplier shall comply with its obligations as a Processor under and in accordance with Law.
- 53.21** The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purpose for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.
- 53.22** The University may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 53.23** The parties agree to take account of any guidance issued by the Information Commissioner's Office. The University may on not less than 30 working days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 53.24** The Supplier shall Process Personal Data in performing the Services as notified by The University only for as long as required and for no longer than the term of this Contract.
- 53.25** The Supplier warrants that it shall:
  - 53.25.1** Process the Personal Data in compliance with Law; and
  - 53.25.2** take appropriate technical and organisational measures against Data Breach.
- 53.26** The document titled "Schedule of Processing.xlsx will make up part of the data protection terms.

## **54 SOCIAL VALUE**

- 54.1** You shall endeavour to assist Us in fulfilling Our duty under the Public Services (Social Value) Act 2012 to consider how this Contract might improve the economic, social and environmental well-being of the relevant geographical area and if so to act with a view to securing that improvement.
- 54.2** You shall use reasonable endeavours to ensure that wherever possible, local people are employed and local sub-contractors utilised in connection with delivery of the Contract.

**All University of Worcester general and special terms and conditions are mandatory. Agreement to any amendment(s) must be reached prior to any award of this agreement, should agreement not be reached the University of Worcester reserves the right to exclude your submission as non-compliant.**

Full name of Company \_\_\_\_\_

Company number \_\_\_\_\_

Registered address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Post code \_\_\_\_\_

\_\_\_\_\_

If the organisation is not a limited  
company please name the proprietors \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

Position \_\_\_\_\_

Signature and acceptance \_\_\_\_\_

Telephone number \_\_\_\_\_

Mobile number \_\_\_\_\_

E-mail address \_\_\_\_\_