

CITY UNIVERSITY - GENERAL CONDITIONS OF SALE

1 DEFINITIONS

1.1

"Seller" means The City University or any subsidiary of The City University named as Seller in the Purchase Order.

"Buyer" means the individual, firm or company from whom the Purchase Order is issued.

"Goods" includes all goods covered by the Purchase Order whether raw materials, processed materials or fabricated products and for the avoidance of doubt "Goods" shall include all software and hardware covered by the Purchase Order.

"Services" means performance of the services which are the subject of the Purchase Order / Confirmation.

"Packages" includes bags, boxes, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.

"Contract" means the agreement which is a legal contract between Buyer and Seller which includes both specifically drawn up Contracts and Contracts made by way of Order Confirmation form. From section 3 of these conditions, all Order Confirmations or specifically drawn up Contracts will be referred to as the "Contract".

"Purchase Order" means Buyer's purchase order.

"Order Confirmation" means Seller's written confirmation of order.

"Software" means computer software in both object code and source code contained on industry standard data transfer media and includes all relevant guides and supporting documentation.

"Service Specification" is a document agreed between the Buyer and the Seller that states in detail the services required along with relevant Key Performance Indicators etc and, if applicable, shall be attached to the Purchase Order.

"Student" is an individual person who is receiving any type of education or training provided by or on behalf of the Seller.

"VAT" means Value Added Tax.

"Intellectual Property Rights" or "IPRs" means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

1.2 In these Conditions the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context admits or requires.

1.3 The expression "person" means any individual, firm, body corporate, unincorporated association, or partnership or joint venture.

1.4 Any reference to a statute or statutory provision and all statutory instruments, orders, by-laws, directions and notices made pursuant to it (whether made before or after the date of this Agreement), includes a reference to the same as from time to time amended, modified, extended, re-enacted, consolidated, or replaced provided that amendments, consolidations, modifications, extensions, re-enactments or replacements made after the date of this Agreement will not have substantively changed any provision which is relevant to this Agreement.

2 GENERAL

2.1 The Order Confirmation document constitutes an acceptance by the Seller to provide the Goods and/or Services stated on the Order Confirmation from the Seller. The offer status of specifically drawn up contracts if applicable will be defined in the specifically drawn up Contract document.

2.4 Should there be any inconsistency between the documents comprising the legally binding Contract, the order of precedence shall be:

2.4.1 firstly, an agreed variation to the Order Confirmation;

2.4.2 secondly, the terms and conditions on the face of the Order Confirmation / Contract;

2.4.3 thirdly, the terms and conditions in any attachments to the Order Confirmation / Contract;

2.4.4 lastly, these Conditions.

3 PRICES

Unless specifically agreed by the Buyer and the Seller in writing no variation of price is permitted for the duration of the Contract. Prices are inclusive of packing, carriage, packaging, insurance and delivery and any duties or levies, but exclusive of any VAT (unless specifically stated on the Contract) which if apply, shall be shown separately on invoices. Expenses will comply with the Seller's Travel Policy (a copy of which is available at the Buyer's request).

4 QUALITY

The quantity, quality and description of the Goods and Services shall, subject as provided in these Conditions, be as specified in the Order Confirmation and/or in any applicable Service Specification supplied by the Buyer to the Seller. It is a condition of the Contract that:

4.1 All Goods and Services shall conform to the express terms of the Contract and any sample, specification or description in the Contract;

4.2 All Goods and Services supplied shall be fit and sufficient for the purpose for which they are intended to be used or held out by Seller, of satisfactory quality (within the meaning in the Sale of Goods Act 1979 as amended), good construction, of adequate strength and free of defects whether patent or latent in design, material and workmanship;

4.3 All Goods and Services supplied and all manufacture and packaging of the Goods shall comply with the implied conditions warranties and terms contained in the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 and any other applicable statutes and regulations and any statutory re-enactment(s) or modification(s) thereof and with any specification of the British Standards Institution (or equivalent) which is applicable to the Goods and Services (or any of them) at the time of the Contract and the Seller shall inform the Buyer as soon as it becomes aware of any changes in applicable legislation which may affect the supply of the Goods or Services; and

4.4 All Services shall be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

5 DELIVERY AND PACKAGING

The date of delivery of the Goods or performance of the Services shall be as specified in the Contract unless agreed otherwise in writing between the Buyer and the Seller. The Seller shall furnish such programmes of manufacture and delivery as the Buyer may reasonably require and the Seller shall give notice to the Buyer as soon as practicable if such programmes are or are likely to be delayed. If the Goods are to be delivered, or the Services to be performed, by instalments, the Contract will be treated as a single contract and not severable. All Goods must be adequately protected against damage and deterioration in transit and delivered carriage paid. Insurance should be arranged by the Buyer. Any information relating to the handling and storage of Goods upon receipt is to be clearly marked on the packaging and accompanying paperwork.

6 RELATIONSHIP BETWEEN THE PARTIES (ALL CONTRACTS)

In carrying out the Services or providing Goods under this Contract, the Seller is and shall remain an independent enterprise and shall never be deemed to be an agent, partner or employee of the Buyer.

7 HEALTH & SAFETY

The Seller shall:

(a) observe, and ensure all its personnel engaged in the provision of the Goods and/or Services observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises;

(b) notify the Buyer as soon as it becomes aware of any health and safety issues which arise in relation to the provision of the Goods and/or Services;

(c) before the date on which the Goods and/or Services are to be delivered, obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to the Goods and/or Services.

8 TERMINATION AND SUSPENSION

8.1 The Contract shall be terminated if:

(a) Either the Buyer or the Seller is in breach of the Contract, where such breach is incapable of remedy.

(b) Either the Buyer or the Seller is in breach of the Contract, where such breach is capable of remedy but after being given a reasonable period to rectify breach, the party in breach fails to do so.

(c) Either the Buyer or the Seller becomes insolvent or makes an arrangement with its creditors (or being an individual) becomes bankrupt or (being a company) has an administrative receiver of an administrator appointed or commences to be wound up (other than for the purposes of bona fide solvent amalgamation or reconstruction).

(d) There is a change in "control" (within the meaning in Section 416 Income and Corporate Taxes Act 1988) of a party.

(e) Either the Buyer or the Seller or any of its employees is convicted of breaking any law that is in force in the United Kingdom and where to continue to trade with that party would put the other party in breach of the law.

8.2 The Order Confirmation should state any applicable duration of the agreement. Where no duration is noted in the Order Confirmation, the Contract shall be considered terminated by both parties after supply of the specific initial requirement against the Contract for the shortest possible duration.

8.3 In the event of termination through a Seller responsible cause, no payments beyond those for services which have already occurred (on a pro-rata basis) will be due from the Buyer. In the event of termination through a Buyer responsible cause, the Buyer shall pay the full cost of the contract (or any remaining balance if part payment has been made) to the Seller within 30 days.

8.4 If after discussion concerning any difference, dispute or question, arising from the Contract the Buyer and the Seller are unable to reach agreement, the matter shall be referred to an independent arbitrator. The arbitrator shall be agreed on by the Buyer and the Seller within thirty (30) working days, or in default of such an agreement, be nominated by the President of the Law Society of England and Wales. The provisions of the Arbitration Acts of 1950 and 1979, and any statutory modification or re-enactment thereof will apply to such arbitration.

9 PASSING PROPERTY AND RISK TO BUYER

Risk in the Goods shall pass to the Buyer once dispatched by the Seller. Property in the Goods shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

10 ACCEPTANCE

The Buyer shall be deemed to have accepted Goods on delivery.

11 TERMS OF PAYMENT

11.1 The Seller shall be entitled to invoice the Buyer on or at any time after the Order Confirmation is sent to the Buyer.

11.2 Payment will be due 30 days from the date of the invoice (unless otherwise agreed).

11.3 A separate invoice must be submitted for each Contract and should detail the Goods or Services provided.

11.4 Value Added Tax, where applicable, shall be shown separately on all invoices.

11.5 Payment methods will be communicated on the invoice.

12 WARRANTY

Without prejudice to any rights that the Buyer may have under the Contract or by statute, common law or otherwise:

12.1 If requested by the Buyer, the Seller shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, the Seller's erroneous instructions as to use or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of Seller's warranties, expressed or implied;

12.2 Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.

13 CONFIDENTIALITY

13.1 Both Parties shall treat all information that they have access to as a result of this Contract as confidential and shall not disclose it to any other party without the written authority of the other Party, unless required to do so by law.

13.3 The Buyer accepts that even if information is requested to be held confidential, that the Seller may be required under the Freedom of Information Act to disclose such information to other parties. In such cases, the Buyer accepts that the Seller will not be held liable for any resulting impacts to the Buyer's business incurred as a result of such disclosure.

13.4 In the event that either Party acquires any Personal Data (as defined in the Data Protection Act 1998) the Party shall keep such information confidential and shall only process such data in accordance with its data protection notification and the Data Subject's consent. Such Personal Data shall be processed by the Party in accordance with the seventh principle of the Data Protection Act 1998.

13.5 The provisions of this condition shall apply during the continuance of this Contract and after its termination howsoever arising.

14 INTELLECTUAL PROPERTY RIGHTS (IPRs)

14.1 The Seller warrants that in respect of any IPRs owned by a third party and which are used in the provision of the Services and/or the manufacture and supply of the Goods to the Buyer, that it has obtained all necessary permissions and licences to use such IPRs.

14.2 The Buyer grants to the Seller a royalty-free, world-wide, perpetual, irrevocable, non-exclusive licence to use the Buyer's IPRs required solely for the purposes of this Contract.

14.3 All pre-existing IPRs utilised in the delivery of this Contract shall remain with the original owner and shall not be transferred by the operation of this Contract.

15 ASSIGNMENT, SUB-LETTING & RIGHTS OF OTHER PARTIES

15.1 The Contract will not be assigned by the Seller nor sub-contract as a whole.

15.2 The Buyer and Seller do not intend that any terms of the Contract shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to the Contract.

15.3 Rights and obligations under the Order / Contract are not to be assigned by either Party without the written consent of the other.

15.4 If any provision of the Contract is found by any court, tribunal or other administrative body of competent jurisdiction to be unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidability, unenforceability or unreasonableness, be deemed severable and the remainder of the provision shall continue in full force and effect.

16 VARIATIONS

No variation to the Contract or any of the Goods or Services to be supplied under this Contract, shall be effective unless such variation is in writing and signed by both Parties.

17 EQUALITY

Both Parties agree to comply with their own policies and procedures to prevent unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief and comply with statutory obligations under all applicable equality related legislation or prevailing legislation for the prevention of discrimination on the grounds of disability, race, sex, sexual orientation, age, religion or belief (or if existing outside of the United Kingdom, other relevant national legislation covering the same areas of discrimination), and accordingly, will not in practice treat one group of people directly or indirectly less favourably than others because of any of the above mentioned grounds.

17.1 Both Parties warrant that their practices and procedures comply with legislation to prevent unlawful discrimination (whether that legislation exists in the United Kingdom or other countries as relevant) and that its employees are fully trained on matters relating to the prevention of unlawful discrimination.

18 FORCE MAJEURE

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. The obligations of the parties under the Contract will be suspended until such circumstances have eased.

19 CONSTRUCTION OF CONTRACT

19.1 These terms and conditions and any subsequent amendments to them issued by the Seller take precedence over any contract order or other document issued by the Buyer.

19.2 The construction, validity and performance of the Contract shall be governed by the law of England and subject to the exclusive jurisdiction of the English courts.

October 2009