

PURCHASE ORDER TERMS & CONDITIONS

VERSION 4.0, February 2019

These are the terms and conditions (**Conditions**) on and subject to which the supplier named on the purchase order accompanying these Conditions (**Purchase Order**) agrees to supply and the University of Bristol, a corporation incorporated in England and Wales by Royal Charter with registration number RC000648 and an exempt charity whose principal offices are at Beacon House, Queens, Road, Bristol, BS8 1QU, United Kingdom (**University**) agrees to take and pay for, the goods and/or services specified in the Purchase Order (**Goods** or **Services**).

Words or expressions stated in bold shall denote defined terms used throughout these Conditions and references in these Conditions to “writing” or “written” shall include email but not fax

1. BASIS OF CONTRACT

- 1.1. The Supplier’s quotation constitutes an offer by the Supplier to sell the Goods and/or provide the Services to the University.
- 1.2. The University shall be deemed to accept the Supplier’s offer, and a contract shall come into existence between the parties in accordance with these Conditions, upon the University issuing a Purchase Order to the Supplier (**Contract**). Performance by the Supplier of its obligations under these Terms shall not entitle the Supplier to claim any payment for the Goods and/or Services where a Purchase Order has not been issued by the University.
- 1.3. If there is conflict between these Conditions and special conditions attached to the Purchase Order, then the latter shall take precedence. In the absence of any special conditions these terms and conditions shall apply to all Purchase Orders placed with the Supplier under this Agreement and these cannot be superseded by any of the Supplier’s terms
- 1.4. Only Purchase Orders sent by email from an email address ending “@bristol.ac.uk” or “@bris.ac.uk” shall be valid unless the University agrees otherwise.
- 1.5. These Conditions apply to the exclusion of any other terms or conditions that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or any course of dealing between the parties.
- 1.6. The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing a written acceptance of the Order; or
 - (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 1.7. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2. SUPPLY OF GOODS & SERVICES

- 2.1. The University expects the Supplier to notify it of any assumptions and/or dependencies which must be met for the fulfilment of its obligations and the University shall not be liable for the Supplier’s failure to identify the same nor shall the Supplier be relieved from performing its obligations as result of such failure.
- 2.2. The Supplier warrants that it has full capability, capacity, authority and all necessary consents to perform this Contract.
- 2.3. Conditions relating to the Goods
 - (a) The Goods shall be delivered to the address specified on the Purchase Order or notified to the Supplier by the University (**Delivery Location**), at the time and date(s) specified in the Purchase Order unless otherwise expressly agreed by the parties A delivery note must accompany the Goods and specify the type and quantity of Goods delivered and the Purchase Order number.
 - (b) Goods shall not be delivered by instalments without the University’s consent or as specified on the Purchase Order. If delivered by instalments, the Goods may be invoiced and paid for separately. Failure to deliver any instalment on time or at all or any defect in an instalment shall entitle the University to the remedies below.
 - (c) Delivery of the Goods shall be completed once the Goods have been unloaded at the agreed location (**Delivery**).

- (d) The University will be deemed to have accepted the Goods 10 Business Days from Delivery unless it gives notice to the Supplier under clause 3. The University’s signature on any delivery note is evidence only of the number of packages received and not evidence of acceptance of the Goods. Acceptance under this sub-clause (d) of the Goods shall not affect any rights or remedies that the University may have under this Contract (or otherwise).
- (e) The Supplier warrants that the Goods (i) will be sold to the University with valid and unrestricted title; (ii) are of satisfactory quality and fit for any purpose held out by the Supplier or expressly made known to the Supplier by the University; (iii) are free from defects in design, materials and workmanship and will remain so for the longer of 12 months or any manufacturer’s warranty period; and (iv) comply with all applicable statutory and regulatory requirements.
- (f) To the extent that the Goods are to be installed by the Supplier, the Supplier shall install the Goods in a good and workmanlike manner and make good any damage caused as a result of installation. The Supplier shall test and inspect the Goods following installation and notify the University once installation has been completed. The University shall have accepted the Goods after completion of installation, provided the University has not exercised in writing any of the remedies below.
- (g) Title and risk in the Goods shall pass to the University on Delivery of the Goods at the Delivery Location (where the Supplier is not to install the Goods) or upon acceptance of the Goods in accordance with clause 2.3(f) (where the Supplier is to install the Goods).

2.4. Conditions relating to the Services

- (a) The Supplier warrants that the Services will (i) conform to the University’s requirements made known to the Supplier; (ii) specifications and/or acceptance criteria (if any) (iii) be performed with that standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all applicable statutory and regulatory requirements.
- (b) Unless agreed otherwise in writing, the Supplier shall provide all equipment, consumables and other items required to provide the Services.

3. REMEDIES

- 3.1. If the Goods and/or Services do not comply with the warranties in clauses 2.3 or 2.4, the University shall, without limiting any other remedies available to it, have the right to any one or more of these remedies:
 - (a) reject the Goods and/or Services in full or in part and in the case of Goods, return them at the Supplier’s own risk and expense;
 - (b) require the Supplier to repair or replace the rejected Goods or re-perform the Services without further cost to the University;
 - (c) refuse to accept any subsequent supply of the Goods and/or Services;
 - (d) where the University has paid any sums in advance for the Goods and/or Services, to require such sums to be refunded by the Supplier; and/or
 - (e) recover from the Supplier any costs and expenses reasonably incurred by the University in procuring replacement Goods and/or substitute Services which are substantially similar to those to be provided by the Supplier.
- 3.2. These Conditions apply to any repaired or replacement Goods and/or Services provided by the Supplier.
- 3.3. Any repaired and/or replaced Goods and/or Services are deemed to be warranted for the longer of 12 months or the manufacturer’s warranty period.

4. INVOICING & PAYMENT

- 4.1. The amounts specified on the Purchase Order represent the full and exclusive remuneration and include every cost and expense of the Supplier in respect of the supply of the Goods and/or Services (including packaging, delivery, installation, import duties and taxes where applicable).
- 4.2. The Supplier may invoice the University for Goods supplied on or at any time after Delivery and for Services provided on or at any time after completion of the provision of the Services.

- 4.3. Each invoice must correspond with the amount and currency specified on the Purchase Order and quote the Purchase Order number.
- 4.4. Purchase invoices to the University must be sent to the following email address: purchasing-invoices@bristol.ac.uk The University will consider and verify each invoice in a timely manner with a view to confirming whether each invoice is valid and undisputed. The University shall pay each invoice in full and in cleared funds within 30 days from the date on which it determines each invoice to be valid and undisputed.
- 4.5. All fees and charges exclude VAT which the University shall, upon receipt of a valid VAT invoice from the Supplier, pay in addition.
- 4.6. If the University fails to make any payment due under this Contract by the due date for payment, the University shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The University shall pay the interest together with the overdue amount.

5. CANCELLATION

- 5.1. The University may cancel by notice in writing to the Supplier any order for Goods (including any agreed instalment) which have not yet been delivered and Services which have not yet been performed.
- 5.2. Where the University exercises its rights under clause 5, the University will pay such fees or charges for Goods which have been delivered or which are in transit or Services which have been performed together with the costs of materials which the Supplier has purchased to fulfil its obligations, provided they cannot be used for other customers or returned to the supplier of those materials for a refund.
- 5.3. The University shall not be liable for any loss of anticipated profits or any indirect or consequential loss arising as a result of cancellation.

6. TERMINATION

- 6.1. The University may terminate this Contract immediately by written notice if the Supplier:
 - (a) commits a material breach of its obligations under these Conditions which cannot be remedied within a period of 10 Business Days of receiving written notice of such breach by the University; or
 - (b) becomes insolvent or any similar insolvency event occurs or action or proceeding is taken to manage the affairs of or wind up the Supplier.
- 6.2. Termination of this Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

7. LIABILITY & INSURANCE

- 7.1. Nothing in these Conditions shall exclude or limit liability for damage to property or for death or personal injury caused by a party's negligence or wilful default or for any other matter for which liability may not be excluded or limited by law.
- 7.2. The University's liability shall not exceed the total value of the Goods and/or Services supplied under this Contract.
- 7.3. The Supplier's liability shall not exceed 200% of the total value of the Goods and/or Services supplied under this Contract or the maximum sums assured under clause 7.6 below, whichever is greater.
- 7.4. Neither party shall be liable to the other for any indirect, special or consequential loss or loss of turnover, profits, business opportunities or anticipated savings (whether direct or indirect).
- 7.5. Each party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 7.6. The Supplier shall take out and maintain public and product liability insurance (to include product liability) of at least five million pounds (£5,000,000) where Goods are supplied or, where Services are to be provided, either professional indemnity insurance or other appropriate insurance to cover the principal risks associated with the type of services being provided, of at least one million pounds (£1,000,000).

8. SUBCONTRACTING

- 8.1. The Supplier shall not enter into any contract with any third party whereby that third party agrees to perform any of the Supplier's obligations in relation to the Goods and/or Services (**Sub-Contract**) without the University's prior written consent and where the University gives consent to any Sub-Contract, the Supplier shall:
 - (a) be responsible for the acts or omissions of its subcontractors as though they are its own; and
 - (b) be liable to the University for any costs, losses, damages or expenses suffered or incurred by the University arising out of or in connection with any act or omission of its subcontractors.
- 8.2. The Supplier shall ensure that all Sub-Contracts contain a provision requiring the Supplier to consider and verify each invoice received from its subcontractors in a timely manner with a view to confirming whether each invoice is valid and undisputed and to pay each invoice received from its subcontractors within a specified period not exceeding 30 days from the date on which the Supplier determines each invoice to be valid and undisputed.
- 8.3. The Supplier shall pay each invoice received from its subcontractors within 30 days from the date on which the Supplier confirms each invoice to be valid and undisputed and at the University's request, provide the University with evidence of compliance with this clause 8.

9. INTELLECTUAL PROPERTY

- 9.1. In this Contract 'Intellectual Property Rights' mean patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 9.2. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
 - (a) provided to the Supplier by the University shall remain the University's property absolutely;
 - (b) prepared by or for the Supplier specifically for the University in relation to the performance of the Contract shall belong to the University.
 - (c) Pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to the University insofar as it is necessary for the University to exercise its other rights under the Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.
- 9.3. The Supplier indemnifies the University against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the University for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the performance of this Contract by the Supplier save where such infringement or alleged infringement is caused by any act or omission on the part of the University.

10. HAZARDOUS GOODS AND SAFETY

- 10.1. Where access to the University's premises is required, the Supplier and all the people employed or otherwise engaged by it (including but not limited to sub-suppliers), shall throughout the duration of this Contract comply fully with the requirements of the Safety Legislation and with all those other policies and procedures in connection with the operation of the business including but not limited to the reasonable requirements of the University's security and health and safety procedures and other reasonable instructions of any of the University's representatives appointed in respect of the works at the University's premises.
- 10.2. For the purpose of this clause, "**Safety Legislation**" means the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but

not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999, the Construction Design Management Regulations 2007 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on member states) imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the provision of Goods and/or performance of Services and the health and safety of the users of such goods and equipment.

10.3 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the University on or before Delivery with all data (in English) necessary to allow the University to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Laws.

10.4 Unless specifically agreed, the Goods shall not contain asbestos.

11. FREEDOM OF INFORMATION AND DATA PROTECTION

11.1 The Supplier acknowledge that the University is subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the University (at the Supplier's expense) as required by the University in relation to these laws to allow the University to reply to any requests within the time limits contained in section 10 of the FOIA and 5 of the EIR.

11.2 Any requests for information received by the Supplier shall be forwarded to the University immediately.

11.3 The provisions of this clause 11 shall extend to sub-contractors and the Supplier shall ensure compliance with these requirements herein stated. 11.4 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 instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out under the Contract.

11.5 The Supplier shall promptly comply with any request from the University requiring the Supplier to amend, transfer or delete the Personal Data.

11.6 The Supplier shall only collect any Personal Data (as defined in the Data Protection Laws) in a form which is fully compliant with the General Data Protection Regulation 2016/679 Data Protection Act 2018 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 purposes 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.

11.7 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the University.

11.8 The Supplier shall promptly inform the University if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable or if the Supplier becomes aware of any unauthorised or unlawful processing. The Supplier will restore such Personal Data at its own expense.

11.9 The Supplier shall notify the University within 2 Business Days if it receives a request from a Data Subject for access to that person's Personal Data.

11.10 The Supplier shall provide the University with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.

11.11 The Supplier shall not disclose the 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.

11.12 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 11.

12. GENERAL PROVISIONS

12.1. Confidentiality: The Supplier undertakes that it shall not at any time disclose to any person (other than to those of its personnel who need to know such information for the performance of the Supplier's obligations or as may be required by law or a court of competent jurisdiction) any confidential information concerning the business, affairs, customers, clients or suppliers of the University and shall not use such confidential information for any purpose other than to perform its obligations under this Contract.

12.2. Force majeure: Neither party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under this Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for a continuous period of 30 days, the party not affected may terminate this Contract by giving written notice to the other party.

12.3. Assignment and other dealings: The University may at any time assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract. The Supplier may not assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights of obligations under these Contract without the University's prior written consent.

12.4. Severance: If any court or competent authority finds that any provision or part-provision of this Contract invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.

12.5. Amendment: No amendment to this Contract will be effective unless recorded in writing and signed by an authorised representative of the Supplier and an authorised representative of the University's purchasing department.

12.6. Waiver and Cumulative Remedies: (a) a waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.7. Third party rights: A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.8. Notices: Notices must be made in writing addressed to a party at its registered office (if a company or LLP) or principal place of business (in any other case) and delivered by hand, or sent by first class post or other next working day delivery service. Delivery will be deemed to take place if delivered personally, when left at a party's address or if sent by first class post or other next working day delivery service, at 9.00am on the second working day after posting. This clause does not apply to the service of any proceedings or documents in any legal action.

12.9. Modern Slavery: The Supplier shall comply with all anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but limited to the Modern Slavery Act 2015 and shall not in any circumstances engage in, promote or otherwise support child labour, human trafficking or any other means of exploitation. The Supplier shall take reasonable steps to monitor and manage its own direct supply chain and sub-contractors compliance with all anti-slavery and human trafficking laws, statutes and regulations from time to time in force.

12.10. If requested by the University, the Supplier shall demonstrate effective implementation of its policies and procedures in relation to equality, diversity, human rights and modern slavery and take specific action to make any necessary changes.

12.11. Governing law and jurisdiction: This Contract shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

12.12. Brexit: For the purposes of this Clause 46 the term "Brexit" means that during the Term of this Agreement pursuant to Article 50 of the Treaty of Lisbon the UK leaves the European

Union. In the event of Brexit, if either Party considers that the consequences of Brexit materially increase the costs of it performing its obligations under this Agreement and/or reduces its income under this Agreement by 20% or more and/or otherwise adversely affects the benefit it derives from this Agreement, such Party may give notice to the other of the same, and shall promptly supply such details and evidence of such consequences as may reasonably be required by the other Party). Within fourteen (14) days of the other Party receiving such notice, the Parties shall discuss in good faith and agree whether any amendments are required to this Agreement as a result of Brexit, such that the provisions of this Agreement maintain the same overall balance of obligations, benefits, liabilities and risk between the Parties as applied at the date of this Agreement. The Parties agree that the imposition of tariffs and other trade barriers relating to the subject matter of this Agreement and not in existence at the date of the Agreement shall be considered a change in the overall balance.