

TERMS AND CONDITIONS OF PURCHASE

1 INTERPRETATION

"Buyer" means the University of Southampton

"Seller" means the person, firm or company to whom the Purchase Order is issued

"Purchase Order" means the Buyer's Purchase Order for Goods and/or Services

"Goods" means the goods (including any installment, component, part of or raw materials used in such goods) described in a Purchase Order

"Services" means the services (if any) described in the Purchase Order "Contract Terms" means these general terms and conditions of purchase and includes any special conditions agreed in writing between the Buyer and Seller

"Contract" means each contract for the purchase of Goods and Services on the Contract Terms

2 BASIS OF PURCHASE

2.1 The Buyer's Purchase Order constitutes an offer by Buyer to purchase the Goods and/or acquire the Services subject to the Contract Terms. Any of the following are deemed to constitute the Seller's agreement to comply with the Contract Terms: -

2.1.1 any acceptance of a Purchase Order by the Seller (notwithstanding any conditions attached to such acceptance or any purported incorporation of terms other than the Contract Terms by the Seller);

2.1.2 the commencement of any work by the Seller; or

2.1.3 the delivery of any Goods or the performance of any Services by or on behalf of the Seller.

2.2 The Contract Terms shall apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to Buyer or subject to which a Purchase Order is accepted or purported to be accepted by the Seller.

2.3 No variation to a Purchase Order or these Contract Terms shall be binding unless agreed in writing by Buyer's authorised representative.

2.4 To the extent that any special conditions agreed in writing between Buyer and the Seller are inconsistent with these general conditions of purchase, the provisions of the special conditions shall prevail.

3 QUALITY AND SPECIFICATION

3.1 The quantity, quality and description of the Goods and the Services shall be as specified in the Purchase Order and/or in any specification supplied or agreed in writing by Buyer.

3.2 The Goods and Services shall be fit for purpose for which the Buyer has purchased them, or if this is not specified, the purpose for which Goods and Services are usually purchased. They will be of the quality, quantity, performance, specification and description ordered by the Buyer and shall conform with all legal requirements, applicable standards and codes of practice, any governing specifications or standards referred to in the Purchase Order and with any sample, specification or description which the Buyer has given to the Seller or which the Seller has given to the Buyer.

3.3 Goods and Services which do not meet these requirements shall be considered as defective.

3.4 The Seller must inform the Buyer immediately if he knows or has any reason to suspect that any Goods or Services may be defective or have a latent defect or are of a batch or design which has proven defective when supplied to others.

3.5 Any specification produced or supplied by Buyer, or specifically produced for Buyer by the Seller in connection with the Contract, together with the copyright, design rights and any intellectual property rights in such specification shall be Buyer's exclusive property.

3.6 Goods made or Services performed to Buyer's specification shall not be manufactured for or supplied to any other party.

3.7 Buyer shall be entitled to inspect and test the Goods during manufacture, processing or storage prior to despatch and to test the Services during performance, without relieving the Seller of the Seller's obligations.

3.8 The Seller shall comply with all applicable regulations and legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the Goods and the performance of the Services.

3.9 The Goods shall be marked in accordance with Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition.

4 INFORMATION

4.1 The Seller shall provide to Buyer such information about the Goods and any components, parts or raw materials used in manufacturing the Goods including information relating to possible risks to health and safety and environment.

4.2 The Seller must quote the Purchase Order number on all documentation relating to the Contract.

5 PRICE

5.1 The price of the Goods and the Services shall be as stated in the Purchase Order and, unless otherwise so stated, shall be exclusive of any applicable VAT and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery. Any additional charges agreed with Buyer prior to delivery, such as overnight or small order charges, must be shown separately on the Seller's invoice.

5.2 No increase in the price may be made for any reason without Buyer's prior written consent.

6 PAYMENT

6.1 Unless otherwise stated by Buyer, payment shall be made within 28 days of receipt and agreement of invoice.

6.2 Time of payment shall not be of the essence.

6.3 Buyer may set off against the price any sums owed to Buyer by the Seller.

7 DELIVERY

7.1 The date of delivery of the Goods and/or Services shall be specified in the Purchase Order unless agreed otherwise between Buyer and Seller.

7.2 The Seller shall furnish such programmes of manufacture and delivery as Buyer may reasonably require and Seller shall give notice to Buyer as soon as practicable if such programmes are or are likely to be delayed.

7.3 Delivery shall be deemed to be made on receipt of the Goods and/or Services by Buyer at the place of delivery specified in the Purchase Order during Buyer's normal business hours in accordance with the terms of the Contract.

7.4 Time of delivery of the Goods and of performance of the Services is of the essence.

7.5 A delivery note quoting the Purchase Order number must accompany each delivery.

7.6 Buyer does not accept delivery or performance by instalments unless previously agreed in writing. If Goods are to be delivered or Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

7.7 If Goods are incorrectly delivered, Seller shall be held responsible for any additional expense incurred in delivering them to their correct destination.

8 ACCEPTANCE

8.1 Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted them until Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect has become apparent.

9 RISK AND TITLE

9.1 Risk of damage to or loss of the Goods shall pass to Buyer on delivery in accordance with the Contract.

9.2 Ownership of the Goods shall pass to Buyer on delivery, or if earlier, when payment for the Goods is made.

9.3 If Buyer properly rejects any Goods the risk in and title to those Goods shall revert to the Seller.

10 COMPLIANCE

10.1 The Seller shall comply with all applicable regulations (including the General Product Safety Regulations 1994) and other legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the Goods and performance of the Services and concerning hazardous substances.

11 WARRANTIES

11.1 The Seller warrants to Buyer that the Seller is fully qualified, financed and organised to perform the Contract and that the Goods:-

11.1.1 will be of satisfactory quality and fit for all purposes for which the Goods are commonly supplied;

11.1.2 will be free from defects in design, material and workmanship;

11.1.3 will correspond with any relevant specification or sample; and

11.1.4 will comply with all statutory requirements, regulations and EU regulations relating to the manufacture and sale of the Goods, product safety, packaging, labelling and hazardous substances (including the appropriate British Standard or equivalent specification unless otherwise agreed).

11.2 The Seller warrants to Buyer that the Services:-

11.2.1 will be performed by appropriately trained and qualified personnel, with due care and diligence; and

11.2.2 will comply with all statutory requirements, regulations and EU regulations relating to the performance of the Services.

12 CERTAIN RIGHTS AND REMEDIES ON DEFAULT

12.1 Each of Buyer's rights or remedies is without prejudice to any other right or remedy.

12.2 If Goods are not delivered or Services are not performed on the due date then Buyer shall be entitled to cancel the Purchase Order (or any part) without liability and purchase substitute items or services elsewhere and recover from the Seller any loss or additional costs incurred.

12.3 If any Goods or Services are not supplied or performed in accordance with the Contract, then Buyer shall be entitled:-

12.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or

12.3.2 whether or not Buyer has previously required the Seller to repair the Goods or to supply replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the price already paid.

13 INDEMNITY

The Seller shall indemnify Buyer in full against all liabilities, losses (whether direct or indirect and including loss of profits and expenses (including legal expenses)) awarded against or incurred by Buyer as a result of or in connection with:-

13.1 breach of any warranty relating to the Goods or the Services;

13.2 any claim that the Goods infringe the intellectual property rights of any person, except to the extent that the claim arises from compliance with Buyer's specification;

13.3 any claim made against Buyer in respect of any breach or alleged breach by Buyer of any statutory provision, regulation or other rule of law arising from the Seller's acts or omissions or those of the Seller's employees, agents or sub-contractors;

13.4 any liability under the Consumer Protection Act 1987, the General Product Safety Regulations 1994 and under regulations relating to hazardous substances or under the Environmental Protection Act 1990 in respect of the Goods and/or the Services; and

13.5 any act or omission of the Seller or the Seller's employees, agents or sub-contractors in supplying, delivering and installing the Goods and in performing the Services, including any injury, loss or damage to persons caused or contributed to by the negligence of the Seller, the Seller's employees, agents or sub-contractors or by faulty design, workmanship or materials.

14 FORCE MAJEURE

Neither the Seller nor Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of their respective obligations if the delay or failure was beyond their reasonable control. For the avoidance of doubt, illness or shortage of the Seller's staff or sub-contractors or the failure or delay by any of the Seller's sub-Sellers to supply goods, components, services or materials shall not be regarded as causes beyond the Seller's reasonable control.

15 SPARE PARTS

Where applicable, the Seller shall ensure that all spare and/or replacement parts, components and materials for the Goods shall be available from the Seller for 10 years from date of first use by Buyer of the Goods in question.

16 INSTALLATION AND WORK ON SITE

16.1 The Seller shall at all times whilst on Buyer's premises or on site comply with and procure that its employees, agents and sub-contractors comply with all relevant statutory and other legal requirements relating to the provision of the Services, all health and safety legislation and all security and safety regulations and rules from time to time in force on those premises or site and will be deemed to have full knowledge of such regulations, copies of which shall be supplied on request.

16.2 Where the Seller is responsible for installation of the Goods and/or providing other Services, such Services shall be carried out to Buyer's satisfaction. On receipt of a commissioning certificate from Buyer's authorised representative, which shall not constitute acceptance of the Goods and Services, the Seller shall clear away and remove from Buyer's premises or site all installation plant, service material, rubbish and temporary works and leave the premises or site and the Goods in clean and workmanlike condition. The Seller may by prior arrangement with Buyer leave such equipment and spare parts on such premises or site as may be necessary to carry out its duties under the Purchase Order but does so at its own risk.

17 TERMINATION

17.1 Buyer shall be entitled to cancel Purchase Orders in respect of all or part only of the Goods and/or the Services by giving notice at any time prior to delivery or performance without incurring any liability to the Seller other than to pay for Goods and/or Services already delivered or performed at the time of such notice.

17.2 Buyer shall be entitled to terminate the Contract without liability to the Seller and reserving all rights by giving notice to the Seller at any time if:-

17.2.1 the Seller is in material breach of any of the Seller's obligations and that breach cannot be remedied;

17.2.2 the Seller is in material breach of any of the Seller's obligations and that breach can be remedied but the Seller fails to do so within 30 days starting on the day after receipt of notice from Buyer;

17.2.3 the Seller commits more than one breach of any of the Seller's obligations and the cumulative effect of such breaches is that Buyer reasonably believes that the Seller will continue to deliver a substandard performance over the one month period immediately after the service of notice specified in condition 17.2.2;

17.2.4 the Seller makes any voluntary arrangement with the Seller's creditors or becomes subject to an administration order or goes into liquidation or bankruptcy or an encumbrancer takes possession or a receiver is appointed of any of the Seller's property or assets; or

17.2.5 Buyer reasonably believes that any of the events mentioned above is about to occur and notifies the Seller accordingly.

17.3 If delivery is incomplete then Buyer may accept or reject the Goods or Services delivered or performed and cancel or vary the balance of the Purchase Order.

18 CONFIDENTIALITY

All information supplied to the Seller at any time is and remains Buyer's property and must be returned on request and shall be regarded as confidential.

19 GENERAL

19.1 Purchase Orders are personal to the Seller and the Seller shall not transfer, assign, charge, dispose of or deal in any manner or purport to do the same with any of its rights or beneficial interests under the Contract.

19.2 If Buyer has consented to the placing of sub-contracts copies of each sub-order shall be sent by Seller to Buyer immediately they are issued.

19.3 The Seller shall not sub-contract any of the Seller's obligations under the Contract.

19.4 Any waiver by Buyer of any breach is not a waiver of any subsequent breach.

19.5 Failure or delay by Buyer in enforcing or partially enforcing any provision of the Contract is not a waiver of any of Buyer's rights.

19.6 If any provision of these Contract Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the remainder shall not be affected.

19.7 The Seller shall at all times maintain insurance cover with a reputable insurer against its liabilities under the Contract for a minimum of two million pounds sterling (£2,000,000) per event and shall produce the insurance policy and latest premium receipt to Buyer on demand. Any limitation, monetary or otherwise in such policy shall not be construed as a limitation on the Seller's liability and the Seller shall notwithstanding such limitation remain liable to Buyer without offset or counterclaim.

19.8 All equipment and or Goods paid for or provided by Buyer shall be and remain Buyer's property and must be returned to Buyer in good condition upon request and shall not be copied or used for any purpose other than completion of the Purchase Order. The Seller shall correctly maintain and store such equipment and or Goods and shall be liable for any loss of or damage to it whilst in the possession or under the control of the Seller. The Seller shall keep such equipment and or Goods at such location agreed with Buyer and shall keep such equipment and or Goods clearly identified at all times as the property of Buyer.

19.9 The Seller agrees that nothing connected with the introduction of the Euro as the currency of any of the Member States of the European Union or the replacement of any national currency by the Euro shall alter any of the terms of the Contract or discharge or excuse performance of the Seller's obligations under this contract.

19.10 The Contract shall be subject to English law and to the exclusive jurisdiction of the English courts.

19.11 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999