

Standard Terms of Contract

1. Definitions. In this Contract, unless the context otherwise requires, the words given have the meaning below:

Conditions means these standard terms and conditions and any special terms and conditions of sale (referred to in the Contract Documents);

Confidential Information means all information (written or oral) not in the public domain concerning the business and affairs of either Party which is obtained in connection with this Contract;

Contract means the contract for Supplier to provide the Supply to the University in accordance with the Contract Documents;

Contract Documents means any Specification, the Purchase Order, these Conditions, and any other document identified as forming part of the Contract (in that order of precedence);

Good Industry Practice means using working methods and exercising that degree of professional skill and care, diligence, prudence and foresight which might reasonably be expected;

Goods or Services means the goods or services described in the Contract;

Intellectual Property Rights means patents, trade marks or service marks, registered designs, copyrights, database rights, design rights, confidential information and any other intellectual property right recognised in any jurisdiction;

Package mean any type of package used to make delivery including but not limited to, bags, cases, carboys, cylinders, drums, pallets and other containers;

Parties means the University and Supplier together and **Party** means any one individually;

Purchase Order means the University's order form;

Specification means any designs, drawings or other document issued by the University describing the Goods and/or Services;

Supplier means the seller of the Goods and/or the Services named in the Purchase Order;

Supply means the Goods and/or Services;

University means Brunel University of London who is issuing the Purchase Order.

2. THE CONTRACT

2.1 These Conditions shall only apply where none of the following apply:

(a) the Parties have in place a signed written agreement covering the applicable goods/services; or (b) the University has separately provided specific terms and conditions in respect of the goods/services to Supplier.

2.2 The Contract will be subject to these Conditions unless the Parties have agreed any special terms as specified in any Contract Documents and in which case such special terms shall take precedence. Any other terms and conditions (including any terms or conditions included in any quotation, sales offer, order acknowledgement or any other document issued by Supplier) are expressly excluded. The Contract supersedes all previous agreements and understandings between the Parties.

2.3 The University shall have the right, to direct Supplier in writing to add to, omit or otherwise vary the Supply and Supplier shall carry out such variation on the same terms and conditions of purchase as though the variation had been stated in the original Purchase Order. Where as a consequence of the variation, the price should be varied, the revised price shall be as reasonably determined by the University on the basis of the original price, and the University shall cancel the original Purchase Order and issue a new one.

2.4 The University reserves the right to purchase or order any goods and/or services that are similar to those specified in the Purchase Order from any person other than Supplier.

2.5 Supplier shall perform the Contract in accordance with any stated timescales set out in the Contract Documents and when so stated time shall be of the essence of the Contract. Any failure by Supplier to meet these timescales is a breach of the Contract. If no timescales are specified, then the Contract shall be performed within a reasonable time.

2.6 Where access to the University's premises is required, Supplier shall comply with the University's reasonable requirements. Access shall be at Supplier's risk. At the completion of the Supply, Supplier shall leave the premises in a clean condition and ready for occupation. Any damage must be reported to the University and repaired.

3. QUALITY AND DESCRIPTION

3.1 The Supply shall conform in every respect with:

- (a) the provisions of the Contract (including without limitation any standards of performance specified in the Contract)
- (b) the requirements of any relevant UK or EU statute, order, regulation, directives, standard, code of practice or by-law or international agreement from time to time in force which is relevant to the Supply;
- (c) any recommendation or representation made by Supplier; and
- (d) Good Industry Practice

3.2 Goods shall:

- (a) unless otherwise agreed be fit for any purpose made known to Supplier expressly or by implication and in this regard the University relies on Supplier's skill and judgement;
- (b) unless otherwise specified in the Contract be new, of sound materials and made with skilled and careful workmanship;
- (c) be accompanied with complete and comprehensible instructions for the assembly, use and/or storage of the Goods and if the Goods are hazardous, be marked with the appropriate international danger symbols and with the name of the hazardous material in English; and
- (d) correspond to their description and any samples, patterns, drawings, plans and Specifications.

4. DELIVERY OF GOODS

4.1 Delivery of Goods shall take place on the agreed delivery date and at the specified delivery address during the usual opening hours of those premises, in accordance with any instructions specified by the University.

4.2 If the Goods are not delivered on time or arrive damaged, then the University may by written notice do any of the following: (i) cancel any undelivered balance of the Goods; (ii) return for full credit, and at Supplier's expense and risk, any Goods that in the University's opinion cannot be used; or (iii) require Supplier to expediently repair or replace the Goods.

4.3 The Goods shall be properly packed and dispatched to arrive in good condition. The University shall not be obliged to return to Supplier any Packages, save for any empty returnable containers marked as such, which Supplier will collect at Supplier's sole cost and risk. The University shall not be liable for any Package lost or damaged in transit.

4.4 Each delivery of Goods must be accompanied by a detailed Goods delivery note specifying the Purchase Order reference, agreed date of delivery and Goods being delivered. The University shall be entitled to reject any Goods delivered without a delivery note. Where delivery of the Goods is in accordance with the Contract, a University representative shall sign the delivery note and this signed delivery note shall solely constitute evidence that delivery has occurred.

4.5 Unless otherwise specified in the Contract Documents, Supplier is not entitled to deliver the Goods in instalments and the University shall not be obliged to accept the delivery of any Goods or any quantities of Goods varying from those specified in the Contract including attempted delivery to an address other than that specified in the Contract.

5. ACCEPTANCE OF GOODS; PRODUCT RECALL

5.1 The quantity, quality and nature of the Goods shall be as set out in the Contract. No inspection or testing by the University, nor any approval of a sample, whether before or after delivery of the Goods, nor the signing of any Goods delivery note shall be deemed to constitute evidence of acceptance of the quality or quantity of the Goods.

5.2 The University shall be entitled to reject any Goods delivered that are not in accordance with the Contract and shall not be deemed to have accepted any Goods until either the University has notified Supplier that the Goods are acceptable, or seven (7) days from delivery, whichever first occurs.

5.3 Supplier shall immediately notify the University, providing all relevant details, if Supplier discovers: (i) any defect in any Goods delivered to the University at any time (whether or not any such defect, error or omission represents a breach of any of these Conditions); or (ii) any error or omission in the instructions for the use, handling, storage and/or assembly of any Goods delivered to the University at any time.

5.4 Supplier shall promptly keep the University informed of any matter of which Supplier is (or should, as Supplier of the Goods, reasonably be) aware relating to the storage, transportation, handling, assembly or use of the Goods by the University or any potential hazard.

6. RISK AND TITLE IN GOODS

6.1 Supplier shall bear all risks of loss or damage to the Goods until delivery and insure accordingly.

6.2 Without prejudice to the University's right of rejection of the Goods pursuant to these Conditions, ownership of the Goods shall pass to the University if the University makes any advance payment (thereupon Supplier must mark the Goods as the University's property) or otherwise when the University representative signs the Goods delivery note. Where the University exercises its right to reject the Goods, risk in the rejected Goods shall revert immediately to Supplier upon the University notifying Supplier of this.

7. PRICES AND PAYMENT

7.1 The price of the Supply shall be stated in the Purchase Order. Unless otherwise agreed there are no additional charges, including without limitation for design, storage, packing, insurance, delivery to the delivery address, duty, taxes, installation and commissioning. VAT is payable in addition by the University subject to the receipt of a proper and accurate VAT invoice.

7.2 Any variation in the price of the Supply must be approved in writing by the University before delivery.

7.3 Supplier may only invoice the University following delivery of the Supply (except where a Contract for Services includes agreement for payment by instalments). Where Supplier submits an invoice early, such invoice shall be deemed received on the delivery date as specified in the Contract Documents.

7.4 Each invoice shall be in Pounds Sterling, and in such form as the University may specify from time to time, and shall: (i) be sent to the address specified by the University in the Contract Documents; (ii) state the date of the invoice; and (iii) reference the University's Purchase Order number.

7.5 The University shall, unless otherwise stated in the Purchase Order, pay the price stated in the relevant Purchase Order within thirty (30) calendar days of the receipt of Supplier's proper and accurate invoice issued in accordance with these Conditions.

7.6 If any sums are due to the University from Supplier, then the University shall be entitled to exercise the right to set off such sums against any payments due to Supplier from the University under this Contract or any other contract. Supplier shall not be entitled to apply any amount due to the University under the Contract in or towards payment of any sum owed by the University to Supplier in relation to any matter whatsoever.

8. WARRANTIES

8.1 Subject to Condition 8.2 below, Supplier warrants to the University:

- (a) that the Goods are of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied, or expressly stated in any Contract Documents);
- (b) that the Goods be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with the Specifications of the University); and
- (c) comply with Good Industry Practice.

8.2 Supplier gives the warranty in Condition 8.1 above subject to the following conditions:

- (a) Supplier shall be under no liability in respect of any defect in the Goods arising directly from any flaw in the Specification supplied by the University; and
- (b) Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Supplier's written instructions, misuse, or alteration of the Goods without Supplier's approval.

8.3 Supplier warrants to the University that any Services shall be performed with reasonable skill, care and attention and in accordance with Good Industry Practice.

8.4 Supplier warrants to the University that Supplier has the right to provide the Supply and does not require any consent or permission from a third party to do so.

8.5 Supplier warrants to the University that Supplier shall, as soon as reasonably practicable, repair or replace all or any Goods, which are or become defective during the period of twelve (12) months from delivery (or such other longer period specified in the Contract Documents), where such defects occur under proper usage and are due to faulty design, erroneous instructions as to use, handling or storage, inadequate or faulty materials or any breach of the warranties in Condition 8.1 above. Any repairs or replacements pursuant to this Condition 8.5 shall then themselves be subject to the obligation imposed by this Condition 8.5 for a period of twelve (12) months from the date of delivery, reinstallation or passing of tests (if any), whichever is appropriate after repair or replacement. For the avoidance of doubt, any repair or replacement of Goods under this Condition 8.5 shall be at Supplier's expense entirely.

8.6 Supplier warrants to the University that Supplier shall, where so requested by the University, re-perform any defective Services by such date as the University requires. Re-performance of the Services under this Condition 8.6 shall be at no additional cost to the University.

8.7 Supplier shall use Supplier's best endeavours to transfer or assign to the University or otherwise obtain for the benefit of the University any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods (or part of the Goods) to the extent the same is capable of such transfer or assignment to the University.

8.8 Where there is any breach of Supplier's warranties in Conditions 8.1 to 8.6 above, or if any obligation, warranty or requirement imposed by given or stated in this Contract in respect of the Supply is not complied with, or the Supply or any instalment of the Supply are not delivered at the stated delivery date or the delivered Supply is damaged, then in each such case the University shall be entitled at its sole and absolute discretion without liability to Supplier (arising out of such action) and without prejudice to any other right or remedy of the University to take one or more of the following actions:

- (a) Cancel the Contract and treat the Contract as having never been entered into;
- (b) Reject the relevant Supply (in whole or in part) including any provision of the Supply already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Supply;
- (c) Refuse to accept any delivery of the Supply subsequent to the stated delivery date;
- (d) Recover from Supplier any costs reasonably incurred by the University in obtaining substitute goods and/or services from another supplier;
- (e) Require Supplier at its sole cost to replace or repair the Supply or carry out such work as is necessary within fourteen (14) calendar days so that the Supply conforms to the Contract and any written instructions of the University; and
- (f) Claim such damages as may have been incurred by the University as a result of Supplier's breach of the Contract.

8.9 The University's rights under these Conditions are in addition to any statutory remedies available to the University.

9. INDEMNITY

9.1 In addition to any other remedy available to the University, Supplier agrees to indemnify the University, its employees, contractors, subcontractors and agents in full and on demand against all claims and all direct and indirect losses and expenses including any consequential loss made against or incurred by any of them as set out below, whether or not

such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

- (a) Any claims that the Supply infringe the Intellectual Property Rights of any third party by reason of the use or purchase of the Supply, including any royalties being payable to any third party (save to the extent that the Goods have been supplied in accordance with the Specifications of the University);
- (b) Any termination of the Contract pursuant to Condition 15;
- (c) Any liability arising at common law or under any statute in respect of personal injury or death of any person or persons (including employees of Supplier or any agent, contractor or sub-contractor of it) arising from, during or caused by the supply of the Goods unless solely due to the act or neglect of the University or its employees, contractors, subcontractors or agents; and/or
- (d) Any liability in respect of any damage or injury to any property, arising from, during or caused by the Supply and due to any act, default or negligence of Supplier, Supplier's employees, agents, contractors or subcontractors or their employees.

9.2. Supplier shall provide all facilities, assistance and advice required by the University or its insurers for the purposes of contesting or handling or settling or compromising or appealing any action, claim or matter arising out of Supplier's performance or purported performance of or failure to perform the Contract, including the matters listed in Condition 9.1 above.

10. INSURANCE

10.1. Supplier shall, at Supplier's own cost, effect and keep in place, with reputable insurers, such insurance policies as are appropriate and adequate having regard to Supplier's obligations and liabilities under the Contract. Supplier shall, on the written request of the University from time to time, provide the University with details of the insurance so maintained in force in accordance with this Condition 10. Supplier shall do nothing to invalidate any of the policies maintained in force in accordance with this Condition 10.

11. CONFIDENTIALITY

11.1. Supplier shall keep confidential all Confidential Information disclosed or obtained as a result of the relationship of the Parties under the Contract and shall not disclose the same save for the purpose of proper performance of the Contract or with the prior written consent of the University. This does not extend to:

- (a) any matter which Supplier can show is in or has become part of the public domain, (other than as a result of the breach of obligations of confidentiality under these Conditions); or
- (b) was independently disclosed to it by a third party entitled to disclose the same; or
- (c) is required to be disclosed under any applicable law or by order of a court or governmental body or authority of competent jurisdiction.

11.2. Supplier shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of the University.

12. INTELLECTUAL PROPERTY

12.1. All materials, including any Specification supplied by the University and any copy or copies made by or for Supplier, shall be:

- (a) the property of the University;
- (b) used solely for the purposes of the Contract;
- (c) treated by Supplier as strictly confidential; and
- (d) returned by Supplier immediately on request to the University at Supplier's sole risk and cost.

12.2. Any and all Intellectual Property Rights created or acquired in the course of or as a result of any work carried out by Supplier under this Contract shall from the date of their creation or acquisition by Supplier belong exclusively throughout the world to the University.

12.3. Where Supplier (or its licensors) retains the Intellectual Property Rights Supplier shall grant or procure the grant of an irrevocable, non-exclusive, royalty-free licence or sub-licence to the University to use all aspects of the Supply for all purposes.

12.4. Supplier shall not use the name, any adaptation of the name, any logo, trade mark of "Brunel University of London" in any advertising, promotional or sales materials without the written consent of the University.

13. TERMINATION

13.1. The University shall be entitled to terminate the Contract immediately without payment of compensation or other damages to Supplier by giving notice in writing to Supplier if any one or more of the following events occur:

- (a) Supplier is in breach of the provisions of Condition 15;

(b) Supplier commits a breach of any of Supplier's obligations under these Conditions which is incapable of remedy;

(c) Supplier fails to remedy (where it is capable of remedy) or persists in any breach of any of its obligations under these Conditions within thirty (30) calendar days of having been requested in writing to remedy or desist from such breach;

(d) Supplier ceases to carry on business, is unable to pay its debts when they fall due, is declared bankrupt, or an order is made or a resolution passed for its winding up or for the appointment of an administrator, receiver, liquidator or manager.

(e) Supplier is discovered to have made a material misrepresentation upon which the University relied when entering into the Contract.

13.2. The University shall be entitled to terminate, without incurring costs or liability, the Contract in respect of all or only part of the Supply by giving reasonable notice to Supplier at any time prior to delivery.

13.3. The University shall be entitled to terminate the Contract pursuant to Condition 8.8 and 16.1.

13.4. The termination of the Contract shall be without prejudice to any other rights and remedies of either Party, which may have accrued up to the date of termination. The indemnity at Condition 9 shall apply.

13.5. Upon termination of the Contract for any reason whatsoever:

- (a) Subject to Condition 13.2 above, the relationship of the Parties shall cease save as and to the extent expressly provided for in this Condition 13.5;
- (b) Any provision intended to come into or remain in force after termination, whether expressly or by implication, shall continue in full force and effect; and
- (c) Supplier shall immediately return to the University (or, if the University so requests by written notice, destroy) all of the University's property in Supplier's possession at the date of termination, including all Confidential Information, together with all copies of such Confidential Information, and shall certify to the University in writing that Supplier has done so and that Supplier will make no further use of such Confidential Information.

14. FORCE MAJEURE

14.1. Neither Party shall be liable for any delay or failure to perform if that is caused by circumstances which were not foreseeable at the date of the Contract and are beyond the reasonable control of the defaulting Party. If the Supply cannot be completed within a reasonable time after the delivery date specified in the Contract the non-defaulting Party may cancel the Contract. The University shall pay Supplier such sum as the University determines is fair and reasonable in respect of any part of the Supply performed by Supplier under the Contract and value the University receives prior to cancellation.

15. COMPLIANCE WITH CERTAIN LEGISLATION

15.1. Supplier shall not unlawfully discriminate within the meaning and scope of any applicable equality legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including but not limited to the Equality Act 2010. Supplier shall ensure compliance with this Condition by all its employees in the performance of the Contract.

15.2. Supplier shall comply in all respects with all legislation concerning the provision of the Supply or concerning the conduct of Supplier's business.

15.3. Supplier and the University shall each comply with their respective obligations under applicable data protection legislation including but not limited to the Data Protection Act 2018 in respect of personal data transferred and/or processed under the Contract.

15.4. Supplier must ensure that it adheres to all the provisions of the UK Modern Slavery Act 2015 and ensure that no slavery or human trafficking takes place in any part of its business. Supplier will implement appropriate due diligence procedures and impose obligations to comply with this act when purchasing or subcontracting to ensure there is no slavery or human trafficking in its supply chain. Supplier will respond diligently to and ensure that any due diligence questionnaires received from the University are completed accurately. Supplier will notify the University as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or its supply chain which has a connection to the Contract and furthermore must respond promptly to the University's enquiries and cooperate with any investigation.

15.5 Supplier recognises that the University is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 ("FOIA") or the Environmental Information Regulations 2004 ("EIR") or any other applicable legislation or codes governing access to information and that the University may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under the Contract. Supplier will assist the University to enable the University to comply with its obligations under FOIA, EIR or other applicable legislation governing access to information. Supplier will respond to any such request for assistance from the University at its own cost and promptly and in any event within five (5) calendar days of receiving the University's request. Supplier acknowledges that, while the University will consult with Supplier regarding the release of information, the decision whether to provide the data in response to a request lies entirely with the University.

15.6 Supplier shall, and shall procure that its employees, at all times comply with the Health and Safety at Work etc Act 1974 when performing the Contract.

16. ASSIGNMENT AND SUBCONTRACTING

16.1. Supplier shall not assign, subcontract transfer, charge or otherwise dispose of all or any of Supplier's rights and responsibilities under the Contract without the prior written consent of the University. If Supplier breaches this Condition 16.1, the University shall be entitled to terminate the Contract.

16.2 The University may assign, delegate, subcontract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract at any time without Supplier's prior written consent.

17. NOTICES

17.1. All notices required or permitted to be given under these Conditions between the Parties must be in writing and delivered by hand or sent by recorded delivery post to the official addresses for each Party set out in the Purchase Order. Service of notices by email will not be accepted.

17.2 Notices sent by special delivery post shall be deemed to have been received two (2) calendar days after posting (excluding the day of posting). Notices delivered by hand shall be deemed to have been received on the day of delivery of the notice.

18. MISCELLANEOUS

18.1. Nothing in the Contract shall create or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.

18.2. The Contract shall not create any warranty or right enforceable by any person who is not a party to this Contract, nor shall any term purport to confer a benefit on any person who is not a party to this Contract. For the purposes of the Contracts (Rights of Third Parties) Act 1999, the Parties have not agreed that any third party shall benefit from this Contract.

18.3. Variations to these Conditions shall be binding only if in writing and signed by authorised signatories of both Parties.

18.4 Failure by either Party to enforce these Conditions or to require performance of any obligations under this Contract shall neither be construed as a waiver of that Party's rights or remedies under this Contract. Any waiver of rights or remedies under this Contract must be in writing by the Party granting the waiver to be effective.

19. DISPUTE RESOLUTION

19.1. The Parties shall in good faith attempt to settle any dispute arising out of or in connection with the Contract by negotiation or, where the Parties so agree, by mediation.

20. LAW AND JURISDICTION

20.1. The Contract and any dispute or claim arising out of or in connection with it shall be construed in accordance with English law. Supplier irrevocably submits to the exclusive jurisdiction of the English Courts.