

# Standard Terms and Conditions for Purchase Orders

## 1 Definitions

In these conditions:

**“Authority”** means Cranfield University (RC000151), of College Road, Cranfield, Bedfordshire, MK43 0AL, acting on behalf of the Funding Party.

**“Authority Property”** means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

**“Background IP”** means all Intellectual Property, other than Project IP, which is owned by, proprietary to or licensed to either Party and which is used, sub-licensed or contributed by that Party in the provision of or in connection with the Services;

**“Confidential Information”** means any information which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential.

**“Contract”** means the agreement between the Authority and the Contractor and comprising these short form conditions of contract, the Purchase Order, and any documents referred to therein.

**“Contractor”** means the individual, firm or company with whom the Authority enters into the Contract (including where necessary any of the Contractor’s sub-contractors) as identified in the Purchase Order.

**“Contract Delivery”** means the date identified in the Contract by which the Contractor shall have completed the Contract to the satisfaction of the Authority.

**“Contractor Proprietary Material”** means all Intellectual Property Rights which were created or used by the Contractor prior to the Contract Start or which are created independently of the delivery of the Services and Deliverables.

**“Contract Start”** means the date identified in the Contract when the Contractor shall commence delivery of the Contract.

**“Crown Body”** means any department, office or agency of the Crown.

**“Deliverables”** means any and all literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams, tables, software or other information or goods or materials (in whatever form and on whatever media) developed, designed or otherwise provided during the course of this Contract, to be provided as part of the Services.

**“Funding Party”** means Her Majesty’s Government Communication Centre (referred to in this document as “the Funding Party”), acting as part of the Crown.

**“Goods”** means anything (other than Services or Works) supplied or to be supplied to the Authority under the Contract.

**“Intellectual Property”** means all patents, rights to inventions, including all design and ongoing development rights in all hardware and software including computer software and database rights including rights to use, utility models, copyright and related rights, trade marks, service marks, trade business and domain names,

rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, topography rights, rights to use, and protect the confidentiality of, 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 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.

**“Intellectual Property Rights”** means patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.

**“Party”** means either the Authority or the Contractor and the **“Parties”** means the Authority and the Contractor.

**“Purchase Order”** means the document with this name which is issued by the Authority to the Contractor for the supply of Goods and/or the provision of Services.

**“Premises”** means the location where the Goods are to be delivered and/or where relevant installed as set out in the Purchase Order.

**“Project IP”** means any Intellectual Property that results from or is generated or arises or is made, originated, or developed by or on behalf of the Contractor in the course of the provision of the Services;

**“Services”** means all the service activities that the Contractor is required to carry out under the Contract.

**“VAT”** means Value Added Tax in accordance with the provisions of the Value Added Tax Act 1994.

**“Work”** includes all work to be performed and Services to be rendered, and other obligations to be fulfilled by the Contractor.

## **2 Duties**

- 2.1 The Authority expects that the Contractor will understand the operating environment in which the Services are to be performed and the standards of performance that are necessary.
- 2.2 The Contractor warrants and represents that, throughout the term of this Contract, he has full capacity, authority and all necessary approvals to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor. The Contractor will not (and will ensure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority.
- 2.3 Conditions for the supply of Goods
  - 2.3.1 The Contractor shall unless expressly agreed otherwise, deliver the Goods at the time(s) and date(s) agreed by the Contractor and duly specified in the Purchase Order. A delivery note must accompany the Goods and must specify the quotation reference, the type of Goods being delivered, the Authority’s reference number and the Purchase Order number.
  - 2.3.2 Delivery and any other costs associated with the supply of the Goods (for example, unloading, stacking or installation of the Goods) shall be at the Contractor’s own expense unless otherwise stated on the Purchase Order. Any delivery date or time specified in the Purchase Order shall be of the essence.
  - 2.3.3 Goods may be returned at the Contractor’s expense if they do not correspond with the Contract. The Authority shall be entitled to return any goods to the Contractor for a full refund within 30 days of delivery without incurring any costs or charges whatsoever. If the Authority cancels the whole or any

part of a Purchase Order pursuant to condition 2.3.3, it shall only be obliged to pay the Contractor in respect of those items it has expressly accepted.

- 2.3.4 The cost of packaging will be deemed to be included in the cost of the Goods. If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.
- 2.3.5 The Goods shall be packaged and marked in a proper manner and in accordance with the Authority's instructions/any statutory requirements and any requirements of carriers. Details of the Purchase Order number must be visible on the external packaging.
- 2.3.6 The Goods shall remain at the Contractor's risk until delivery is affected in accordance with this Purchase Order. The property in the Goods shall pass on delivery or on payment of the invoiced price, whichever is the earlier.
- 2.3.7 Unless otherwise stated, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.
- 2.3.8 The Authority's signature given on any delivery note or other document presented for signature in connection with delivery of the Goods is evidence only of the number of packages received, and not evidence of actual quantity, quality or condition of the Goods.
- 2.3.9 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered.
- 2.4 Conditions for the supply of Services
  - 2.4.1 The Contractor shall properly perform the Services specified in the Contract with the 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 relevant statutory requirements, Authority policy (e.g. security, document retention, conflict of interest etc.) and industry good practice.
  - 2.4.2 If any part of the Work is found to be unsatisfactory or not in accordance with the Contract, other than as a result of negligence on the part of the Authority or its authorised representative, the Contractor shall, at his own expense re-schedule and perform the Work correctly within such reasonable time as may be specified.
  - 2.4.3 Where formal progress reports are specified in the Contract the Contractor shall render such reports at such time and in such form as may be specified as or as otherwise agreed between the Contractor and the Authority or its authorised representative.

### **3 Environmental Requirements**

- 3.1 In providing the Goods or Services the Contractor shall comply with the Authority's environmental policy, which is to meet their needs for goods, services, works and utilities in a way that achieves value for money or a whole life basis in terms of generating benefits not only for the Authority, but also to society and the economy, whilst minimising damage to the environment.
- 3.2 All written documents produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.
- 3.3 Maximum use must be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging. Packaging must be capable of recovery for reuse or recycling.

### **4 Health, Safety and Security**

The Contractor shall ensure that all of the Contractor's personnel who have access to or are employed on the Authority's premises comply with the Authority's health, safety and security procedures and instructions and complete any additional security clearance procedures required by the Authority before working at the Authority's premises.

## **5 Invoices and Payment**

The Contractor shall submit an invoice upon delivery or within 28 days of meeting any milestone set out in the request for quotation or proposal to the satisfaction of the Authority or otherwise within 28 days of supplying the Goods or Services to the satisfaction of the Authority. The invoice shall show the amount of VAT and include: the Purchase Order Line Number, the correct delivery address and the description of Goods or Services corresponding to the Purchase Order. The Authority shall pay the Contractor within 30 days of receipt of an invoice except where an invoice is disputed or the Authority deems the invoice to be incomplete or inaccurate. The Authority shall return any incomplete or inaccurate invoices to the Contractor.

## **6 Corrupt Gifts and Payments of Commission**

- 6.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to, or procure on behalf of any person in the employment of the Crown, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in connection with the Contract.
- 6.2 If the Contractor or any of his employees, servants, agents or sub-contractors, or any person acting on his or their behalf, commits any offence under the Bribery Act 2010, with or without the knowledge of the Contractor, in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- (a) to terminate the Contract with immediate effect by written notice to the Contractor and recover from the Contractor the amount of any loss to the Authority resulting from the termination;
  - (b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
  - (c) to recover from the Contractor any other loss sustained as a result of any breach of this Condition, whether or not the Contract has been terminated.
- 6.3 When exercising its rights or remedies under Condition the Authority shall:
- (a) act proportionately in the light of the gravity and circumstances of the particular breach; and
  - (b) give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

## **7 Confidentiality**

- 7.1 The Contractor undertakes:
- (a) to treat as confidential all information which may be derived from or obtained in the course of the Contract; and
  - (b) to take all necessary precautions to ensure that all such information is treated as confidential by the Contractor, his staff, agents and sub-contractors.
- 7.2 The Contractor undertakes to ensure that all Contractor personnel, agents and sub-contractors have signed equivalent confidentiality or non-disclosure provisions.

## **8 Disclosure of Information and Transparency**

- 8.1 To enable compliance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations, the Authority reserves the right to disclose information about this Contract pursuant to a valid request for information, subject to any exemptions applicable to the Authority.
- 8.2 The Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, which shall not be unreasonably withheld. Such consent shall not be required where the information is already in the public domain, is in the possession of the Contractor without restriction as to its disclosure, or is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.
- 8.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety to the general public, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract.
- 8.4 The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.

## **9 Data Protection Act**

- 9.1 The Contractor shall not disclose or allow access to any personal data provided by the Authority or acquired by the Contractor during the course of the Contract, other than to a person employed or engaged by the Contractor or any sub-contractor, agent or other person concerned with the same.
- 9.2 Any disclosure of or access to personal data allowed under condition 9.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.
- 9.3 The Contractor shall store or process such personal data only at sites specifically agreed in writing, in advance, with the Authority.
- 9.4 The Contractor shall implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the personal data and having regard to the nature of the personal data which is to be protected.

## **10 Discrimination**

The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

## **11 Sub-Contracting and Assignment**

- 11.1 The Contractor shall not sub-contract or transfer, assign, novate, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Authority.
- 11.2 Subject to condition 11.1, where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, it shall cause a term to be included in such contract which:

(a) requires payment to be made by the Contractor to the supplier or sub-contractor within a period not exceeding 30 days from receipt of a valid invoice as defined by the contract requirements; and

(b) ensures the flow down of the obligations under this Contract upon the Contractor to the sub contractor on a mutatis mutandis basis.

## **12 Intellectual Property Rights**

12.1 All Background IP owned by or licensed to either Party prior to the commencement of the provision of the Services will remain the property of that Party or the licensor to that Party as appropriate.

12.2 The Authority grants to the Contractor, for the purposes of the provision of the Services, a world-wide, royalty-free, non-exclusive licence to use that part of the Authority's Background IP which is required for that purpose.

12.3 All right, title, and interest in and to any Project IP shall belong exclusively to the Contractor and the Contractor shall, in its sole discretion, be entitled to apply for all patent and other registrable intellectual property rights whatsoever in respect of the Project IP. Upon completion of the Services and payment of the Fees and all other sums due to the Contractor from the Authority in full, the Contractor will grant to the Authority for the Authority's sole use a non-exclusive, world-wide, non-transferable licence to use that part of the Contractor's Background IP used in the provision of the Services and a non-exclusive world-wide non-transferable licence to use that part of the Project IP which, in each case, is wholly and necessarily required for sole use of the Deliverables. Such licences granted to the Authority under this clause 1.3 shall only be revocable by the Contractor in the event that the Authority takes any step or does any act inconsistent with the Contractor's rights of ownership in the Project IP.

12.4 All rights associated with the deliverables provided by the Contractor under clause 12 of the Contract shall assigned directly to the Funding Party and not to the Authority.

## **13 Termination**

13.1 If the Contractor fails to fulfil its obligations under the Contract the Authority may terminate the Contract immediately by written notice and, in accordance with condition 16 (Recovery of Sums from the Contractor), may recover from the Contractor any reasonable costs necessarily and properly incurred by the Authority as a consequence of termination.

13.2 The Contractor shall ensure the Authority is given immediate notice in writing of any proposed disposal or transfer (whether in whole or in part) of any interest in the Contractor or any group company (whether by group restructuring, private sale or an offer to the public), or any proposed amendments to the Memorandum or Articles of Association (or equivalent documents) of the Contractor or any group company ("Change of Control"), such notice to confirm the identity of the person or persons who will be obtaining interest in the Contractor as a result of such Change of Control. The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

## **14 Break**

14.1 Without prejudice to condition 13 (Termination), the Authority shall at any time have the right to terminate the Contract or reduce the quantity of Goods or Services to be provided by the Contractor

in each case by giving one months' written notice. During the period of notice the Authority may direct the Contractor to deliver all or any of the Goods or Services under the Contract. Where the Authority relies on either of these rights, the Contractor may claim reasonable costs that are necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, loss of goodwill and consequential losses, but the claim for such costs shall not exceed the total cost of the Contract.

- 14.2 Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

## **15 Liability**

15.1 If the Contractor causes loss or damage while performing the Contract he shall without delay and at the Contractor's own expense, reinstate, replace or make good such loss or damage to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority, for any such loss or damage. The Contractor shall not be liable for any loss or damage which is caused by the neglect or default of the Authority. "Loss or damage" includes but is not limited to: loss or damage to property; personal injury; sickness or death; and loss of profits or loss of use suffered as a result of any loss or damage.

15.2 Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.

## **16 Recovery of Sums from Contractor**

Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Authority, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Authority or with any department, agency or office of Her Majesty's Government

## **17 Insurance**

The Contractor shall effect and maintain an adequate level of relevant insurance cover in respect of all risks that may be incurred by him in the performance of this Contract. At the request of the Authority, the Contractor shall produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

## **18 Audit**

The Contractor shall keep full and accurate records of the Contract, all expenditure reimbursed and payments made by the Authority for 6 years after the end of the Contract. Where necessary, the Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

## **19 Notices**

A notice may be served: by delivery to the Contractor by sending it by email or facsimile to him; or by ordinary first class post to the Contractor's last known place of business or registered office. A notice shall be deemed served at the time of delivery, after four hours for an email or facsimile, or on the fifth working day after posting by first class post.

## **20 Variations to the Contract**

No variation to the Contract will be effective until it has been recorded in writing and signed by the Authority and the Contractor.

## **21 Duration**

The Contract will begin on issue of a Purchase Order from the Authority which will include a delivery date or end date for the Contract.

## **22 Contractor's Personnel**

The Authority has the right to reject any person or persons proposed by the Contractor to work under the Contract. If the Authority gives the Contractor notice of rejection of any person or persons, the Contractor will submit other suitably qualified person or persons for consideration by the Authority. The decision of the Authority as to the acceptability of individuals proposed by the Contractor shall be final and conclusive. The Contractor will bear the cost of any notice, instruction or decision of the Authority under this condition.

## **23 Authority Property**

- 23.1 All Authority Property will remain the property of the Authority and will be used solely in the performance of the Contract and for no purpose without the prior written approval of the Authority.
- 23.2 The Contractor will be liable for any loss of or damage to any Authority Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Authority.
- 23.3 The Contractor will maintain all items of Authority Property in good and serviceable condition, fair wear and tear excepted and in accordance with the manufacturers recommendations.

## **24 Waiver**

The failure of either the Contractor or the Authority to insist upon strict performance of any provision of the Contract, or the failure of either the Contractor or the Authority to exercise any right or remedy to which it is entitled under the Contract, will not constitute a waiver and will not diminish the obligations established by the Contract. No waiver of any provision of the contract will be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with condition 19 (Notices).

## **25 Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of the Contract will continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **26 Publicity**

The Contractor is prohibited from publishing or otherwise circulating any information concerning the Goods/Services or the Authority and shall ensure that any sub-contractors involved in the work shall also comply with this requirement.

## **27 Force Majeure**

If any Party is prevented from or delayed in the performance of any of its obligations under this Contract by any event beyond the reasonable control of that Party, including, but not limited to, acts of God, civil commotion, war, fire, flood, industrial action or political interference, terrorism or the effects of terrorism or an epidemic then it shall notify the other Party in writing of the circumstances, and shall be excused from performing those obligations for so long as the event shall continue. If the event continues for longer than 60 days, the Party not claiming relief under this condition shall be entitled to terminate the Contract by giving the other Party 30 days' written notice.

## **28 Rights of Third Parties**

This Contract is enforceable by the original Parties to it and by their successors in title and permitted assignees. No provision of this Contract will be enforceable by any person who is not a Party to it pursuant to



the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available independently of that Act.

**29 Entire Agreement**

The Contract sets forth the entire agreement and understanding between the Parties and supersedes all previous statements, documents and negotiations relating to the subject matter of the Contract provided that nothing in this condition purports to exclude any liability for any representation made fraudulently.

**30 Dispute Resolution**

- 30.1 In the event of dispute, the Parties shall negotiate in good faith to reach a solution. If they do not reach a solution within one month the Authority may refer the dispute to mediation. During the dispute the Contractor shall at the Authority's discretion continue to perform the Contract with all due diligence.
- 30.2 Where the Parties fail to reach agreement, either Party may refer the dispute to arbitration. Such arbitration shall be governed by the provisions of the Arbitration Act 1996. The London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration shall be applied and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules. The tribunal shall consist of a sole arbitrator to be agreed by the Parties. If the Parties fail to agree the appointment of the arbitrator within ten (10) days of the arbitration notice or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA. The arbitration proceedings shall take place in London and in the English language; and shall be governed by, and interpreted in accordance with, English law.

**31 Law and Jurisdiction**

This Contract shall be governed by and interpreted in accordance with English law and, subject to condition 30 (Dispute Resolution) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

**SIGNED** by Commercial on behalf of **Authority**

Signature.....

Name .....

Position .....

Date .....

**SIGNED** for and on behalf of **Contractor**

Signature.....

Name.....

Position.....

Date .....