**Cardiff metropolitan university**

**general terms and conditions of contract**

**for the supply and / or installation of equipment**

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**CARDIFF METROPOLITAN UNIVERSITY**

## Terms and Conditions of Supply and / or Installation of Equipment

**1. definitions and interpretations**

1.1 In this Contract, the following words shall have the following meanings:

“Contract” shall mean the Cardiff Metropolitan University Purchase Order (as and when issued), these terms and conditions and any and all Schedules, Annexes and Appendices hereto.

“Commissioning” shall mean testing of the installed Equipment and demonstration to Cardiff Metropolitan University’s reasonable satisfaction that the Equipment is functioning in a proper and acceptable manner.

“Completion Date” shall be the date that the Contractor commits to have completed all tasks required for the satisfactory completion of the requirements of this Contract.

“Contractor” shall mean the person, firm or company to whom any relevant Cardiff Metropolitan University’s Purchase Order, contract or letter of appointment is issued and / or attached to these terms and conditions.

“Delivery Address” shall be the point/s of delivery and / or installation as specified in this Contract.

“Equipment” shall mean all equipment, goods, product and / or materials in any form whatsoever supplied by the Contractor in connection with this Contract.

“Installation” shall mean the installation of any and all Equipment either supplied by the Contractor, Cardiff Metropolitan University or any third party, such installation including necessary all works, connections and / or testing as required for the full and proper performance of the Equipment unless otherwise agreed elsewhere in this Contract.

“Performance” shall mean the act of performing or carrying out of activities required under the provisions of this Contract.

“Purchase Orders” shall mean any and all Purchase Orders issued to the Contractor by Cardiff Metropolitan University in relation to this Contract. For the purpose of clarification, the terms and conditions of this Contract shall prevail over any conflicting terms contained in any Cardiff Metropolitan University Purchase Order.

“Schedules” shall mean any and all Schedules attached and referred to in the Contract.

“Supply” shall mean the act of delivery of Equipment in accordance with the requirements herein.

“Term” shall mean the date from which this Contract commences until the date of expiry, termination or completion of Installation as defined herein.

“Terms and Conditions” shall mean these terms and conditions and any and all Appendices and / or Schedules as defined herein.

“Works” shall mean any and all activities performed or services provided by the Contractor in connection with this Contract, including but not limited to installation.

“University” shall mean Cardiff Metropolitan University, its subcontractors and affiliates.

1.2 Unless the context requires otherwise, the singular shall include the plural, plural the singular, and any words importing persons shall include firms, companies and corporations.

1.3 Any reference in this Contract to any provision of statute shall be construed as a reference to that provision as from time to time amended or re-enacted.

1.4 The headings in this Contract are for the convenience of the parties only and shall in no way be used to affect the interpretation or construction of this Contract.

**2. GENERAL PROVISIONS**

2.1 All Services provided and any Equipment supplied by the Contractor resulting from the requirements of this Contract shall be in accordance with these Terms and Conditions. Furthermore, these Terms and Conditions shall supersede and render void any and all terms, written or implied, submitted by the Contractor at any time and / or under which Equipment or Services may have been previously supplied to the University.

2.2 Acceptance in writing or by performance shall constitute full acknowledgement and acceptance of the requirements and terms of this Contract by the Contractor, and any conflicting or subsequent terms and conditions proffered by the Contractor in any form or medium whatsoever shall be deemed void and unenforceable and have no bearing whatsoever on the function or requirements of this Contract or on the parties hereto unless specifically agreed to the contrary in writing by both parties.

**3 scope of Contract**

the Contractor hereby agrees, upon the Terms and Conditions of this Contract, to:

3.1 supply Equipment and / or Works as defined in Schedule A or any scope or schedule of works issued to the Contractor in respect of this Contract, free from encumbrances, and that the University shall enjoy quiet possession.

3.2 provide any and all relevant operating and maintenance manuals and schedules, training, COSHH and any other relevant legislative information or data. Such provision shall be effected no later than the initial date of delivery or performance unless otherwise agreed in writing.

3.3 accepts that it is deemed that the Contractor has examined the locations of any and all deliveries of Equipment or Performance of Works and to have understood the nature and extent of the requirements of this Contract and shall make no claim founded on his failure to do so save in the event of such failure being directly occasioned by errors or omissions in information supplied in writing by the University to the Contractor.

3.4 perform its obligations under the Contract in accordance with these terms and conditions and to comply and co-operate with any reasonable instructions given by the University.

3.5 unless otherwise agreed in writing, to be responsible at its own cost for the provision of all necessary staff, materials and equipment for the management and execution of all obligations under this Contract.

3.6 perform all obligations with all due skill, care and diligence.

**4 PRICE AND PAYMENT**

4.1 The price payable, including details of any progress payments and securities required in respect thereof shall be set out in Schedule A or in any other related instructions to the Contractor, and shall be inclusive of all charges. No variation to the prices set out in this Contract shall be permitted save where a mechanism for price variation is agreed between the parties and incorporated elsewhere in this Contract.

4.2 Where VAT or any other tax or duty is applicable, the Contractor shall provide a valid tax invoice, with such duty or taxes itemised. Payment of monies due shall be made in accordance with Schedule A provided that invoices are correctly addressed, completed and presented in accordance with the requirements herein, together with any certificates of completed works. All invoices which are incorrectly completed or submitted shall be returned to the Contractor unpaid to be corrected and re-submitted.

4.3 The University’s payment terms are thirty (30) days, upon receipt of a correctly submitted invoice.

4.4 The Parties acknowledge that the HM Revenue and Customs ‘Intermediaries Regulations’ may apply to the Contractor in providing the Services under this Agreement. In any scenario where the Intermediaries Regulations may apply, the University has reasonably concluded that the Supplier is ‘self-employed’ as defined by the UK HM Revenue and Customs. As such, the University is expecting and relying upon the Supplier to properly declare its earnings accrued under this Agreement and to pay all properly due tax and National Insurance due on the accrued sums. In any event where the University receives or incurs any costs, charges, actions or the like in respect of any failure by the Supplier to properly declare and pay any tax, National Insurance or other statutory deductions, the Supplier hereby agrees to indemnify the University against any such costs, losses or liabilities arising from the Supplier’s default under this clause 4.4.

**5. QUALITY**

5.1 The Contractor warrants to the University that the design and /or manufacture and / or installation of all Equipment supplied and all Works performed hereunder shall conform to the specifications and / or descriptions set out in this Contract. Furthermore the Contractor warrants that the Equipment shall be fit for the intended purpose, shall be of sound materials and workmanship, shall be of satisfactory quality and durability, free from any defects, latent or otherwise, and the same as any sample supplied to and approved by the University.

5.2 In addition to the requirements of clause 5.1 herein, the Contractor warrants that the Works shall be performed in accordance with the standards specified herein. In the absence of any such specified standards or where the standards specified are not applicable to any or all elements of the Works, the Works, or those elements of the Works not covered by the standards specified herein, shall be performed to a standard deemed as complying with the best standards normally applied within the Contractors’ own industry or profession.

5.3 The Contractor further warrants that the design and / or manufacture and / or installation of all Equipment and / or Performance of all Works provided hereunder shall conform in all respects with all relevant statute, orders and regulations in force at the date of Supply or Performance, and that the use of the Equipment or Works by the University shall not infringe any patent, trade mark, intellectual property or any other similar rights.

5.4 The Contractor shall ensure that any and all Equipment provided under this Contract is packed and supplied in such a manner as to reach the Delivery Address in good condition, and that the packaging and supply complies with all relevant statute and regulations.

5.5 The Contractor shall indemnify the University against any and all costs, losses, liabilities or expenses the University may incur as a result of any breach of the Contractors’ warranties contained in Clause 4 herein.

**6 contract term, delivery and time performance**

6.1 The term of this Contract, together with the Completion Date and any time related dates and / or frequencies and / or conditions of Supply or provision of Works shall be as specified in Schedule A unless otherwise agreed in writing.

6.2 Any request by the Contractor for any extension to the Completion Date must be made in writing as soon as any potential delay becomes apparent but no later than the Completion Date binding at that time. Any such request must give full and reasonable justification for any such request.

**7 property and risk**

7.1 Unless otherwise agreed in writing, the University shall not assume Risk in any Equipment until such Equipment is properly installed and any and all required commissioning and testing has been competed to the University’s satisfaction.

7.2 Property in the Equipment shall pass to the University upon payment for the Equipment in full.

7.3 Neither the assumption of Risk or Property as defined in this clause nor the making of any payment whatsoever shall prejudice the University’s rights of rejection or any other right or remedy, whether under this Contract or at law.

**8 Acceptance AND CERTIFICATES**

8.1 Notwithstanding the requirements of clause 7 herein, the University reserves the right to reject any Equipment supplied or Works performed which in its opinion fail to comply fully with the requirements set out in this Contract.

8.2 In the event of rejection as herein defined, the University shall have the right to exercise the option to demand the removal of Equipment or the suspension or termination of Works, and to purchase the Equipment and / or Works elsewhere. Before exercising the right to purchase elsewhere, the University shall give the Contractor reasonable opportunity to replace the rejected Equipment or to re-perform the rejected Works with Equipment and / or Works that comply fully with the requirements herein.

8.3 Save where performance and remedy criteria are agreed between the parties hereto and incorporated elsewhere in this Contract, and notwithstanding Contractors’ opportunities under 8.2 herein, should the Contractor fail to provide replacement Equipment or re-performed Works that meet the requirements herein within a period of fourteen (14) days from date of initial rejection by the University , then the University shall have the right to terminate this Contract in accordance with clause 13.1.3 herein.

8.4 In the event of termination under the provisions of clause 8.3 herein, the parties shall reconcile and effect remuneration for all Equipment supplied and / or Works performed up to the date of termination where such Equipment or Works are acceptable and compliant with the requirements of this Contract, and reconcile and return any monies paid in advance by the University for Equipment or Works where such delivery or performance was not effected.

**9 WARRANTIES, LIABILITIES AND DAMAGES**

* 1. The Contractor shall be liable for and shall indemnify and hold harmless the University, its employees, agents and sub-contractors against any and all costs, charges and liabilities resulting from personal injury or death or loss or damage to any property which may arise from any act or omission, negligent or otherwise or wilful misconduct of the Contractor, Contractors’ employees, agents or sub-contractors out of or in consequence of any operations under this Contract, and the Contractor shall indemnify the University against all actions, demands, damages, costs, charges and expenses arising in connection therewith provided however that nothing in this condition shall render the Contractor liable for any injury or damage resulting from any negligent act or omission of the University or the University’s agents or sub-contractors.

9.2 The Contractor shall, as soon as reasonably practicable, repair or replace any of the Equipment which are or become defective during the period of 12 months from the date of supply where such defects occur under proper usage and are due to faulty design, erroneous use data provided by the Contractor or inadequate or faulty materials or workmanship or any other breach of Contractors’ warranties, express or implied. Repairs and replacement parts shall themselves be subject to the foregoing obligations for a period of 12 months from the date of repair or replacement.

9.3 The Contractor shall make good any defects in any Works performed by the Contractor or any Contractor’s sub-contractors that arise or become apparent within 6 months of the Completion Date. Furthermore, the Contractor shall be liable for making good any latent defects which may appear at any time in any Works performed by the Contractor or any Contractor’s sub-contractors.

* 1. Should the Contractor fail to complete the installation and commissioning of the Equipment and the completion of any and all associated Works by the Completion Date, the University shall have the right to demand damages from the Contractor, such damages being defined as all additional direct costs and charges incurred by the University as a result of any such failure by the Contractor to complete by the Completion Date. The University shall have a duty to mitigate all such costs.

9.5 The Contractor shall not be liable for any repairs, replacement or damages if and to the extent that such defect, damage or delay is caused by the proven negligence of the University, its employees, agents or sub-contractors.

9.6 Neither party excludes or limits liability to the other for death or personal injury caused by its negligence.

9.7 Subject to clause 9.6 the University’s total liability arising under or in connection with, this Contract, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restriction or otherwise, shall be limited as follows:

1. for non-payment of Invoices for Goods or Services purchase, to the amount unpaid.
2. for any other type of liability to the amount paid for the Services in the preceding 12 months.

**10 insurance**

10.1 In addition to maintaining adequate levels of insurance as required by law, the Contractor shall be responsible for effecting and maintaining insurance adequate to cover the risks and potential liabilities specified herein. Satisfactory evidence of such insurance and payment of current premiums shall be made available to the University upon request.

10.2 Furthermore, the Contractor shall ensure that any and all Equipment is fully covered by Contractor’s insurance until such time as the University assumes risk in the Equipment as defined herein.

**11 FORCE MAJEURE**

11.1 For the purpose of this Contract “Force Majeure” shall mean any event(s) or circumstance(s) beyond the control of either party which impedes the due performance of the obligations of such party and which by the exercise of all reasonable diligence such party is unable to prevent provided that the mere shortage of labour materials equipment or supplies shall not constitute Force Majeure.

11.2 If either party is prevented or impeded from or in performing its obligations under this Contract by reason of Force Majeure it shall promptly give notice to the other party stating the circumstances constituting Force Majeure and the extent thereof. The obligations of the parties shall thereupon be suspended for so long as the circumstances of Force Majeure may continue and neither party shall be liable to the other for breach or failure to perform its obligations under this Contract if it is unable to do so under the circumstances of Force Majeure. A party affected by Force Majeure shall use every reasonable effort to minimise the effects of Force Majeure and shall promptly resume performance of its obligations as soon as is reasonably possible after removal of the circumstances of Force Majeure.

11.3 If Force Majeure causes the prevention of any of the requirements of this Contract being performed by the Contractor for a continuous period of twenty-one (21) days, the University shall be entitled by written notice to the Contractor to terminate this Contract forthwith.

**12 SUB-CONTRACTING**

12.1 Neither party to this Contract shall, without the prior written consent of the other party, assign, sub-contract or transfer any rights or obligations under this Contract.

12.2 In the event that this Contract is sub-contracted whole or in part, the Contactor shall ensure that the sub- Contract or/s are made aware of the terms and conditions of this Contract and that they, in the performance of any Services under this Contract, undertake to abide by the same terms as required by the Contractor, and the Contractor shall indemnify the University against any and all costs, expenses and / or claims arising out of any acts of sub-contractors not in compliance with the terms of this Contract.

**13 TERMINATION**

13.1 The University shall have the right to terminate this Contract:

13.1.1 forthwith by notice to the Contractor in the event the Contractor is adjudicated or found bankrupt or insolvent or any order is made or resolution passed for the winding up, liquidation or dissolution of the Contractor, or the Contractor enters into any composition or arrangement for the benefit of its creditors or a receiver administrator administrative received Manager or similar officer is appointed in respect of the whole or any part of the Contractors’ assets.

13.1.2 forthwith by notice to the Contractor if the Contractor fails to perform or observe any of the terms of this Contract in any material respect and in the case of breach capable of remedy fails to remedy same within 14 days or in the event of a breach capable of remedy on more than one occasion notwithstanding that the Contractor has taken steps to remedy such breach on previous occasions.

13.1.3 forthwith by notice to the Contractor if the Contractor fails to remedy any failure to supply acceptable Equipment and / or Works in accordance with the requirements of this Contract.

13.1.4 at any time by giving not less than 30 days notice in writing to the Contractor.

13.2 Subject to clause 13.3 no remuneration or compensation shall become due to the Contractor in respect of any period after termination of this Contract with the exception of monies previously and correctly accrued under this Contract.

13.3 In the event of termination in accordance with 13.1.4 herein, the University liability shall be limited to a fair and reasonable price for any materials purchased by the Contractor intended for performance of this Contract where such materials cannot be utilised under any other Contractors’ Contracts or business opportunities whether existing or prospective provided that any purchase shall only be payable by the University if it would have been payable in accordance with this Contract if it had not been terminated.

13.4 In the event of termination the Contractor shall return all information or materials provided by the University in relation to this Contract.

13.5 Termination shall be without prejudice to any accrued rights or remedies or any continuing obligations (whether express or implied) of either party.

**14 intellectual property**

14.1 The Contractor agrees that any and all property, information and intellectual property furnished by the University under or in connection with this Contract shall belong to the University and the Contractor shall take all reasonable steps to ensure protection of all such rights.

**15 ADVERTISING and CONFIDENTIALITY**

15.1 Neither the Contractor or Contractors’ agents or sub-contractors shall make any reference to this Contract, the University or the University’s affiliates in any medium whatsoever without the express prior permission of the University.

15.2 Neither the Contractor or Contractors’ agents or sub-contractors shall make use of any images, photographs of Cardiff Metropolitan University property, nor use any information given by or gleaned from the University save where such is either in the public domain or is essential for the due performance of this Contract.

**16 waivers**

16.1 No failure or neglect on behalf of the University or its representatives to enforce any of the terms and conditions of this Contract shall be considered as a waiver unless expressly stated to be a waiver in writing by the University. A waiver by the University on one occasion shall not automatically be construed as permitting a waiver at any time in the future.

**17 severance**

17.1 Any provision of this Contract which is declared void or unenforceable by any competent and approved authority or court shall to the extent of such invalidity or un-enforceability be deemed severable and shall not effect the other provisions of this Contract, which shall continue un-affected.

**18 RIGHTS OF THIRD PARTIES**

18.1 Save as expressly provided in these Terms and Conditions, these Terms and Conditions shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 and shall not be enforceable by any other party other than the Contractor and the University.

**19 FREEDOM OF INFORMATION**

19.1 The University is subject to the provisions of the Freedom of Information Act 2000, and under the provisions of this legislation may receive requests from third parties for the disclosure of information supplied by the Contractor. The marking or declaration by the Contractor of any literature, information of data supplied to the University as confidential cannot be taken as an assurance by the Contractor of the confidentiality of such literature, information and / or data held by the University.

19.2 In the event of any request received by the University from a third party requesting the disclosure of information supplied by or relating to The Contractor, the University will notify the Contractor at the earliest available opportunity. The University will furthermore and within the timescales provided for in the Act assess whether the request is valid or whether the nature of the request is covered by any of the exceptions provided in the legislation. In the event of any valid request under the Act, the University will disclose only to the extent required to ensure compliance with the provisions of this legislation.

**20 VARIATIONS**

20.1 No variation of the Contract or of any document referred to in it shall be effective unless the costs of the variation shall be agreed and details of the variation are in writing and signed by the parties.

**21. governing law**

21.1 This Contract shall be construed and governed in all respects by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English and Welsh courts.

**22. EQUALITY & DIVERSITY**

22.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

22.2 The Contractor shall furthermore take all reasonable measures to ensure that there are no forms of slavery, servitude, trafficking of people or forced or compulsory labour in its direct and indirect supply chains and, at the University’s reasonable request, shall provide the University with reports on the measures and outcomes in respect of this matter.

22.3 The Contractor shall take all reasonable steps to secure the observance of clause 22.1 and 22.2 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in performance of this Contract.

**23. DATA PROTECTION**

23.1 Where the Performance of any obligations under this Contract includes any personal data as defined by the Data Protection Act, the Parties shall ensure that the collection, storage, processing or transfer of such personal data is conducted in a manner compliant with the requirements of the Data Protection Act and, where appropriate, the Parties shall execute a data controller or data processor agreement.

24 welsh language

24.1 The Supplier shall use all reasonable endeavours to comply with the requirements of the Welsh Language Act and the University's Welsh Language Policy in performing its obligations pursuant to this Contract.