

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Anti-Bribery and Corruption Policy:** means Teesside University's policy on the Bribery Act 2010 (or any statutory replacement) and related legislation, as updated from time to time and available from <http://www.tees.ac.uk//docs/index.cfm?folder=Human%20Resources%20Policies%20and%20Procedures>

**Business Day:** a day, other than a Saturday, Sunday, public holiday in England or official Teesside University closure day, when banks in London are open for business.

**Commencement Date:** has the meaning set out in Condition 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Condition 26.8.

**Contract:** the contract between You and Teesside University for the purchase of Goods and/or Equipment and/or Services in accordance with these Conditions.

**Data Controller:** has the meaning given to it in the Data Protection Legislation from time to time.

**Data Protection Legislation:** means all applicable data protection and privacy legislation, regulations and guidance including:

Prior to 25 May 2018, the Data Protection Act 1998 ("DPA") and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time); and

From 25 May 2018 onwards, Regulation (EU) 2016/679 (the "General Data Protection Regulations" or "GDPR") and the Privacy and Electronic Communications (EC Directive) Regulations including any law based on or enacting essentially equivalent provisions in the United Kingdom to the GDPR and any applicable guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).

**Data Subject:** has the meaning given to it in the Data Protection Legislation from time to time

**Data Subject Access Request:** means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection legislation to access his or her Personal Data.

**Deliverables:** all documents, products and materials developed by You or Your agents, subcontractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Equipment:** the equipment (or any part of them) set out in the Order.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Modern Slavery Policy:** means Teesside University's policy on the Modern Slavery Act 2015 (or any statutory replacement), as updated from time to time and available from <http://www.tees.ac.uk//docs/index.cfm?folder=Human%20Resources%20Policies%20and%20Procedures>

**Order:** Our order for the supply of Goods and/or Equipment and/or Services, as set out in Our purchase order form.

**Personal Data:** has the meaning given to it in the Data Protection Legislation from time to time.

**Processed:** has the meaning given to it in the Data Protection Legislation from time to time and "Processed" and "Processing" shall be construed accordingly.

**Services:** the services, including without limitation any Deliverables, to be provided by You under the Contract as set out in the Specification.

**Software:** means any and all computer programs and computer software contained on industry standard data transfer media and includes all relevant guides and supporting documentation

**Specification:** the description and any specification for the Goods/Equipment or Services, including any related plans and drawings that are agreed in writing by Teesside University and You.

**University Materials:** has the meaning set out in Condition 8.3(i).

**Use:** means the use of the Software in object code only (unless agreed otherwise in the Contract) in any or all of the following ways: loading, installing, executing, utilising, storing and displaying the Software (in whole or in part) to provide business systems and the processing of data in accordance with the Contract; and copying the Software to create a reasonable number of back-up copies.

**Teesside University, We, and Our** means Teesside University and/or University of Teesside Enterprises Limited (UTEL) as appropriate

**You and Your** the person or firm from whom We purchase the Goods and/or Services.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by Teesside University to purchase Goods and/or Equipment and/or Services from You in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) You issuing written acceptance of the Order; or
- (b) any act by You consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods, Equipment and Services except where the application to one or the other is specified.

## **3. SUPPLY OF GOODS AND EQUIPMENT**

3.1 You shall ensure that the Goods and/or Equipment shall:

- (a) correspond with their description and any applicable Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by You or made known to Teesside University by You, expressly or by implication, and in this respect We rely on Your skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and/or Equipment.
- 3.2 The provisions in Condition 3.1 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial goods or equipment provided by You.
- 3.3 You shall ensure that at all times You have and maintain all the licences, permissions, authorisations, consents and permits that You need to carry out Your obligations under the Contract in respect of the Goods and/or Equipment.
- 3.4 You shall:
  - (a) carefully test and inspect the Goods and/or Equipment before delivery to ensure that they comply with the requirements of the Contract; and
  - (b) if so requested by Teesside University, give Teesside University reasonable advance notice of such tests (which We shall be entitled to attend).
- 3.5 We reserve the right to call for certificates or test certificates for the Goods and/or Equipment at any stage of manufacture or assembly. Such certificates shall clearly state Our Order number and any item or equipment numbers. If, as a result of any inspection or test, We find that the Goods and/or Equipment or any items comprised within them do not comply with the Contract, or are unlikely to comply with it on completion of manufacture, processing or performance, We may inform You, and You shall take such steps as are necessary to ensure compliance.
- 3.6 Notwithstanding any such inspection or testing, You shall remain fully responsible for the Goods and/or Equipment and any such inspection or testing shall not reduce or otherwise affect Your obligations under the Contract, and We shall have the right to conduct further inspections and tests after You have carried out Your remedial actions.

#### **4. DELIVERY OF GOODS AND EQUIPMENT**

- 4.1 You shall ensure that:
  - (a) the Goods and/or Equipment are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods and/or Equipment is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods and/or Equipment (including the code number of the Goods and/or Equipment (where applicable), special storage instructions (if any) and, if We agree in writing to accept delivery by instalments, the outstanding balance of Goods and/or Equipment remaining to be delivered; and

- (c) if You require We return any packaging material for the Goods and/or Equipment to You, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to You at Your cost.

4.2 You shall deliver the Goods and/or Equipment:

- (a) on the date specified in the Order (time for delivery shall be of the essence);
- (b) to the location as is set out in the Order or as instructed by Teesside University before delivery (**Delivery Location**);
- (c) during Our normal hours of business on a Business Day, or as instructed by Teesside University.

4.3 Delivery of the Goods and/or Equipment shall be completed on the completion of unloading of the Goods and/or Equipment at the Delivery Location.

4.4 If You:

- (a) deliver less than 95 per cent of the quantity of Goods ordered, We may reject the Goods; or
- (b) deliver more than 105 per cent of the quantity of Goods ordered, We may at Our sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at Your risk and expense. If You deliver more or less than the quantity of Goods ordered, and We accept the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 You shall not deliver the Goods and/or Equipment in instalments without Our prior written consent. Where it is agreed that the Goods and/or Equipment are delivered by instalments, they may be invoiced and paid for separately. However, failure by You to deliver any one instalment on time or at all or any defect in an instalment shall entitle Teesside University to the remedies set out in Condition 10.1.

4.6 Title and risk in the Goods shall pass to Teesside University on completion of delivery.

## **5. INSTALLATION OF EQUIPMENT AND ACCEPTANCE**

5.1 Unless We and You have, before or at the same time as the Contract, agreed in writing (signed on behalf of Teesside University) additional conditions regarding preparation of or environmental requirements at the site at which the Equipment is to be installed, You acknowledge and agree that the Equipment is suitable to be installed and used at the premises at which We intend to use it and that there are no additional conditions regarding site preparation or environmental requirements.

5.2 In relation to installation and acceptance tests:

- (a) except where Condition 5.2(e) applies, You shall, without further charge to Teesside University, install the Equipment at the premises at which We intend to use it and subject the Equipment to Your standard installation and acceptance tests;
- (b) if the Equipment passes those tests, You will issue an acceptance certificate to that effect to Teesside University, but receipt by Teesside University of such an acceptance certificate will not constitute legal acceptance by Teesside University
- (c) if the Equipment does not (on any attempt) pass those tests, You will (without affecting Our other rights and remedies) promptly and at Your expense carry out all necessary remedial work and re-submit the Equipment to the tests as set out in Condition 5.2(a) and Condition 5.2(b);
- (d) if all the tests have not been successfully completed within 30 days after delivery, We shall have the same rights as We would have had if You had not performed Your obligations under Condition 5.2(a);
- (e) if We and You have, before or at the same time as the Contract, agreed otherwise in writing (signed on behalf of Teesside University), then We (ourselves or through a third party) will be responsible for installing the Equipment and Condition 5.2(a) to Condition 5.2(d) shall not apply.

5.3 We shall not be deemed to have accepted any Goods and/or Equipment until We have had 30 Business Days following delivery to inspect them, or, in the case of a latent defect in the Goods or Equipment, following the latent defect becoming apparent.

## **6. PROPERTY AND RISK**

6.1 The Goods and/or Equipment shall be at Your risk until delivery to Teesside University and installation (where applicable) at the place of delivery specified in the Order

6.2 You shall off-load the Goods and/or Equipment at Your own risk as directed by Teesside University.

6.3 Title to the Goods and/or Equipment shall pass to Teesside University on the earlier of:

- (a) payment for the Goods and/or Equipment; or
- (b) delivery of the Goods and/or Equipment to Teesside University.

6.4 The passing of ownership in the Goods or Equipment is without prejudice to any right of rejection to which We may be entitled under the Contract or otherwise.

## 7. SOFTWARE

7.1 You shall be responsible for providing in accordance with the Contract, all Software and associated documentation where:

- (a) the Contract is for the purchase of Software; and/or
- (b) the Goods and/or Equipment comprise computer hardware and the Software and associated documentation is necessary for the satisfactory operation of the Goods and/or Equipment; or
- (c) the Software and associated documentation is necessary for the satisfactory use of the Services; and/or
- (d) where the provision of such Software and associated documentation is specified in the Contract and/or any attachment.

7.2 For all Software supplied under any of the above 7.1 (a) to 7.1 (d):

- (a) You hereby grant to Teesside University a worldwide irrevocable licence to Use the software (whether modified as hereinafter provided or not) including that supplied on the Goods and / or Equipment or in conjunction with the Services as the case may be;
- (b) You will provide the Software in object code unless otherwise agreed in the Contract. Software should be provided on industry standard software transfer/use media;
- (c) where the Software is provided in source code We shall in perpetuity have the right to modify or add to any of the Software without reference or obligation to You and shall not be obliged to licence back to You any modifications or additions;
- (d) all Your Intellectual Property Rights in the Software shall remain vested in You;
- (e) where source code has been provided We shall have the Intellectual Property Rights in any modification or additions made to the Software, but shall in no case acquire the Intellectual Property Rights in the Software itself;
- (f) We shall not assign or sub-licence to any third party to have the use of the Software, including any translation, compilation, adaptation, enhancement or any other version of the Software without Your prior written consent (such consent not to be unreasonably delayed or withheld) except where:
  - (i) We require to do so in undertaking activities with other organisations that We have due reason to provide access to that Software to; and
  - (ii) We may grant access to Our internal and external auditors, employees and suppliers who need to have access.

Providing always that the access granted does not go beyond the terms of the licence within this Condition 7 and suitable terms are put in place to protect the confidential nature of the Software;

- (g) We shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:
  - (i) as provided in this Condition 7;
  - (ii) as permitted by law; or
  - (iii) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by Teesside University.
- (h) We shall only make so many copies of the Software as are reasonably necessary for operational use and security.

7.3 You shall:

- (a) from time to time, provide Teesside University with copies of the documentation containing sufficient up-to-date information for the proper use of the Software. Such documentation may be supplied in electronic form.
- (b) We may make such further copies of the documentation as are reasonably necessary for the use and maintenance of the Software and for training Our personnel in use of the Software. We shall ensure that all Your proprietary notices are reproduced in any such copy.
- (c) We may provide copies of the documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with Condition 17.

7.4 Where You provide third party Software in accordance with the Contract or otherwise in order to enable You to meet Your obligations under the Contract, You shall either:

- (a) purchase for Teesside University a non-exclusive, perpetual and irrevocable licence to use the Software under a separate licence agreement, or
- (b) grant to Teesside University a sub-licence to use the third party Software under a separate licence agreement.

7.5 Where the Software is licensed directly to Teesside University by Your licensor, You will procure for Teesside University rights in all respects no less favourable than those it would have granted had it granted the rights directly under the express licence at Condition 7.2 (a).

7.6 You hereby warrant that You have the right to grant to Teesside University the rights in the Software and any third party Software as set out in these Conditions.

7.7 You warrant that all computer hardware or Software supplied by You to Teesside University is at the time of installation free from viruses, worms, time locks or anything else that would impair performance of the Software as it might reasonably be expected to operate.



7.8 You will allow Teesside University, at any time within 12 months from the date of delivery of the Equipment, to enter with You into a maintenance agreement for the Equipment (together with any relevant Software).

7.9 Where, at any time, We have not entered into a maintenance agreement of the kind referred to at Condition 7.8, We will be entitled to maintain the Equipment and any Software ourselves, or by or through any third party, and in that case Use will extend to permitting such maintenance of the Software.

## **8. SUPPLY OF SERVICES**

8.1 You shall from the Commencement Date and for the duration of this Contract provide the Services to Teesside University in accordance with the terms of the Contract.

8.2 You shall meet any performance dates for the Services specified in the Order or notified by Teesside University to You.

8.3 In providing the Services, You shall:

- (a) co-operate with Teesside University in all matters relating to the Services, and comply with all of Our instructions;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in Your industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Your obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known by Teesside University to You;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Teesside University, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents which may be required to provide the Services, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of Our premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by Teesside University to You (**University Materials**) in safe custody at Your own

risk, maintain the University Materials in good condition until returned to Teesside University, and not dispose or use the University Materials other than in accordance with Our written instructions or authorisation; and

- (j) not do or omit to do anything which may cause You or Teesside University to lose any licence, authority, consent or permission upon which You or We rely for the purposes of conducting Our business, and You acknowledge that We may rely or act on the Services.

## **9. OUR OBLIGATIONS**

We shall:

- (a) provide You with reasonable access at reasonable times to Our premises for the purpose of providing the Services;
- (b) provide such information as You may reasonably request for the provision of the Services and We consider reasonably necessary for the purpose of providing the Services;
- (c) inform You of all health and safety rules and regulations, and any other reasonable security requirements that apply at any of Our premises.

## **10. OUR REMEDIES**

10.1 If You fail to deliver the Goods and/or Equipment and/or perform the Services by the applicable date, We shall, without limiting Our other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to You;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods and/or Equipment which You attempt to make;
- (c) to recover from You any costs incurred by Teesside University in obtaining substitute goods and/or equipment and/or services from a third party;
- (d) where We have paid in advance for Services that have not been provided by You and/or Goods and/or Equipment which have not been delivered by You, to have such sums refunded by You; and
- (e) to claim damages for any additional costs, loss or expenses incurred by Teesside University which are in any way attributable to Your failure to meet such dates.

10.2 If You have delivered Goods and/or Equipment that do not comply with the undertakings set out in Condition 3.1, then, without limiting Our other rights or remedies, We shall have one or more of the following rights, whether or not We have accepted the Goods and/or Equipment:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to You at Your own risk and expense;

- (b) to terminate the Contract with immediate effect by giving written notice to You;
- (c) to require You to repair or replace the rejected Goods and/or Equipment, or to provide a full refund of the price of the rejected Goods and/or Equipment;
- (d) to refuse to accept any subsequent delivery of the Goods and/or Equipment which You attempt to make;
- (e) to recover from You any expenditure incurred by Teesside University in obtaining substitute goods and/or equipment from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by Teesside University arising from Your failure to supply Goods and/or Equipment in accordance with Condition 3.1.

10.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by You.

10.4 Our rights under this Contract are in addition to Our rights and remedies implied by statute and common law.

## **11. CHARGES AND PAYMENT**

11.1 The price for the Goods and/or Equipment:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in Your published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Teesside University. No extra charges shall be effective unless agreed in writing and signed by Teesside University.

11.2 The charges for the Services shall be set out in the Order, and shall be Your full and exclusive remuneration in respect of the performance of the Services. Unless otherwise agreed in writing by Teesside University, the charges shall include every cost and expense directly or indirectly incurred by You in connection with the performance of the Services.

11.3 In respect of Goods and/or Equipment, You shall invoice Teesside University on or at any time after completion of delivery. In respect of Services, You shall invoice Teesside University on completion of the Services or in accordance with any instalments as set out in the Order. Each invoice shall include such supporting information required by Teesside University to verify the accuracy of the invoice, including but not limited to the relevant Order number. Failure to do so may result in a delay in payments.

11.4 In consideration of the supply of Goods, Equipment and/or Services by You, We shall pay the invoiced amounts within 30 days of receipt of a correctly rendered and undisputed invoice to a bank account nominated in writing by You.

- 11.5 All amounts payable by Teesside University under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by You to Teesside University, We shall, on receipt of a valid VAT invoice from You, pay to You such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Equipment and/or Services at the same time as payment is due for the supply of the Goods and/or Equipment and/or Services.
- 11.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This Condition shall not apply to payments that the defaulting party disputes in good faith.
- 11.7 You shall maintain complete and accurate records of the time spent and materials used by You in providing the Services, and You shall allow Teesside University to inspect such records at all reasonable times on request.
- 11.8 We may at any time, without limiting any of Our other rights or remedies, set off any liability of You to Teesside University against any of Teesside University to You, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 In respect of the Goods and/or Equipment and any goods that are transferred to Teesside University as part of the Services under this Contract, including without limitation the Deliverables or any part of them, You warrant that You have full clear and unencumbered title to all such items, and that at the date of delivery of such items to Teesside University, You will have full and unrestricted rights to sell and transfer all such items to Teesside University.
- 12.2 You assign to Teesside University, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 12.3 You shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 12.4 You shall, promptly at Our request, do (or procure to be done) all such further acts and things and the execution of all such other documents as We may from time to time require for the purpose of securing Teesside University the full benefit of the Contract, including all

right, title and interest in and to the Intellectual Property Rights assigned to Teesside University in accordance with Condition 12.

12.5 All University Materials are Our exclusive property.

**13. CONFLICT OF INTEREST**

13.1 You shall take appropriate steps to ensure that neither You nor any of Your employees, agents or subcontractors are placed in a position where (in Our reasonable opinion) there is or may be an actual conflict or a potential conflict, between the pecuniary or personal interests of You or Your employees, agents or subcontractors and the duties owed to Teesside University under the provisions of the Contract.

13.2 You shall promptly notify Teesside University (and provide full particulars to Teesside University) if any conflict referred to in Condition 10.1 above arises or is reasonably foreseeable.

13.3 We reserve the right to terminate the Contract immediately by giving notice in writing to You and/or take such other steps We deem necessary where in Our reasonable opinion there is or may be an actual conflict, or a potential conflict, between Your pecuniary or personal interests and the duties owed to Teesside University under the provisions of the Contract. Our actions pursuant to this clause 10.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to Teesside University.

**14. INDEMNITY**

14.1 You shall keep Teesside University indemnified against all liabilities, costs, expenses, damages, injury and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Teesside University as a result of or in connection with:

- (a) any claim made against Teesside University for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to Your acts or omissions, or Your employees, agents or subcontractors;
- (b) any claim made against Teesside University by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to Your acts or omissions, Your employees, agents or subcontractors; and
- (c) any claim made against Teesside University by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by You, Your employees, agents or subcontractors;

(d) any breach by You of Your obligations in relation to Data Protection;

(e) any breach of the Modern Slavery Act 2015.

14.2 This Condition 14 shall survive termination of the Contract.

**15. LIMITATION OF LIABILITY**

15.1 Nothing in these Conditions:

(a) shall limit or exclude Your liability for:

(i) death or personal injury caused by Your negligence, or the negligence of Your employees, agents or subcontractors;

(ii) fraud or fraudulent misrepresentation;

(iii) breach of the terms implied in the Sale of Goods Act 1979 or by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(iv) any liability to the extent that it cannot be otherwise excluded or limited by law; or

(b) shall limit or exclude any liability in respect of the indemnities in Condition 14.1.

15.2 Without prejudice to Condition 15.1 above You shall under no circumstances whatever be liable to the University, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

(a) loss of profit; or

(b) loss of goodwill; or

(c) loss of business; or

(d) loss of business opportunity; or

(e) loss of anticipated saving; or

(f) any special, indirect or consequential damage arising under or in connection with the Contract.

15.3 Notwithstanding Condition 15.2, the losses for which You assume responsibility and which shall, (subject to Condition 15.4), be recoverable by Teesside University include:

(a) any sums paid by Teesside University to You pursuant to this Contract, in respect of any Goods and / or Equipment and / or Services not provided in accordance with the terms of this Contract;

(b) additional costs or procuring and implementing replacements for, or alternatives to the Goods and / or Equipment and / or Services, including consultancy costs,

additional costs of management time and other personnel costs and costs of equipment and materials; and

- (c) losses incurred by Teesside University arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, personnel of You, regulator or customer of Teesside University) against Teesside University caused by Your act or omission.

15.4 Your total liability to Teesside University in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed whichever is the higher of:

- (a) 150% of the total order value of the Order; and
- (b) the minimum amounts of the insurance policies specified under Condition 16.

15.5 The provisions of this Condition 15 shall survive termination of the Contract, however arising.

## **16. INSURANCE**

During the term of the Contract and for a period of one year thereafter, You shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance in an amount of not less than £5,000,000 in each case to cover the liabilities that may arise under or in connection with the Contract, and shall, on Our request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **17. CONFIDENTIALITY**

17.1 A party (the **Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (the **Confidential Information**) and have been disclosed to the Receiving Party by the other party (the **Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain.

17.2 The restriction in Condition 17.1 above does not apply to:

- (a) any use or disclosure authorised by the Disclosing Party or required by law or regulation;
- (b) any information which is already in, or comes into, the public domain otherwise than through the Receiving Party's unauthorised disclosure;
- (c) information which is known by the Receiving Party before the Confidential Information is disclosed (as can be demonstrated by the Receiving Party's written records) and is not under any obligation of confidence;

- (d) lawfully becomes available to the Receiving Party other than from a source which is connected with the Disclosing Party (as can be demonstrated by the Receiving Party's written records); or
- (e) information which the Disclosing Party agrees with the Receiving Party is not Confidential Information.

17.3 The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.

17.4 This Condition 17 shall survive termination of the Contract.

## **18. FREEDOM OF INFORMATION**

18.1 You acknowledge that We are subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 and shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by Teesside University to enable Teesside University to comply with Our obligations under the FOIA and the Environmental Information Regulations 2004;
- (b) transfer to Teesside University all requests for information under FOIA and the Environmental Information Regulations 2004 relating to the Contract that You receive as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide Teesside University with a copy of all Information belonging to Teesside University requested in the request for information which is in your possession or control in the form that We require within 5 Working Days (or such other period as We may reasonably specify) of Our request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by Teesside University.

18.2 You acknowledge that We may be required under the FOIA and the Environmental Information Regulations 2004 to disclose information concerning You or the Goods and/or Services (including commercially sensitive information) without consulting You or obtaining Your consent. In these circumstances We shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give You advance notice, or failing that, to draw the disclosure to Your attention after any such disclosure.

18.3 Notwithstanding any other provision in the Contract, We shall be responsible for determining in Our absolute discretion whether any information relating to You or the Goods and/or Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.



**19. DATA PROTECTION**

- 19.1 You acknowledge that We are the Data Controller and place great emphasis on confidentiality, integrity and availability of information and Personal Data. We alone shall determine the purposes for which and the manner in which Personal Data is or is to be Processed.
- 19.2 Neither party shall do any act that puts the other party in breach of its obligations set out in this Condition 19 and nothing in this Contract shall be deemed to prevent any party from taking the steps it deems necessary to comply with the Data Protection Legislation or regulatory provisions.
- 19.3 You shall:
- (a) Process the Personal Data only in accordance with instructions from Teesside University to perform Your obligations under this Contract;
  - (b) ensure that at all times You have in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
  - (c) not disclose or transfer the Personal Data to any third party or Your personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain Our prior written consent (save where such disclosure or transfer is specifically authorised under this Contract), such consent if granted shall include the requirement for the third party to be subject to a written agreement on terms which specify at least the same controls as are required under this Contract;
  - (d) take all reasonable steps to ensure the reliability and integrity of any of Your personnel who have access to the Personal Data and ensure that Your personnel:
    - (i) are aware of and comply with Your duties under this Condition and Condition 17: confidentiality;
    - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Teesside University or as otherwise permitted by this Contract; and
    - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - (e) notify Teesside University within 5 Business Days if You receive:
    - (i) from a Data Subject (or third party on their behalf):
      - (A) a Data Subject Access Request (or purported Data Subject Access Request);
      - (B) a request to rectify, block or erase any Personal Data; or
      - (C) any other request, complaint or communication relating to Teesside University obligations under the Data Protection Legislation;

- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law;
- (f) provide Teesside University with full cooperation and assistance (within the timescales reasonably required by Teesside University) in relation to any complaint, communication or request made as referred to in Condition 18.3(e), including by promptly providing:
- (i) Teesside University with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by Teesside University to enable Teesside University to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
  - (iii) Teesside University, on request by Teesside University, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by Teesside University, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Condition and provide to Teesside University copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

19.4 You shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC without the consent of Teesside University such consent if granted may include the requirement for a written agreement which will include additional safeguards as may be required by Teesside University.

19.5 You shall use reasonable endeavours to assist Teesside University to comply with any obligations under the Data Protection Legislation and shall not perform Your obligations under this Contract in such a way as to cause Teesside University to breach any of Our obligations under the Data Protection Legislation to the extent You are aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

19.6 Each party shall notify the other immediately if they become aware of any actual, threatened or potential breach of security of the Personal Data. You shall, if a breach of security occurs, immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the Personal Data against any breach or threat; and
- (b) prevent an equivalent breach in the future.

19.7 This Condition 19 shall survive the termination of the Contract, however arising.

**20. ANTI-BRIBERY**

20.1 You will, and will procure that Your officers, employees, agents and any other persons who perform services for You or on Your behalf in connection with the Contract (or any other contract between You and Teesside University) will:

- (a) not commit any act or omission which causes or could cause Teesside University or You (or that person) to breach, or commit an offence under any laws relating to anti-bribery and/or anti-corruption;
- (b) comply with Teesside University's Anti-Bribery and Corruption Policy as updated from time to time;
- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received in connection with this Condition 19.1, and permit Teesside University to inspect those records as reasonably required;
- (d) promptly notify Teesside University of:
  - (i) any request or demand for any financial or other advantage received by You (or that person); and
  - (ii) any financial or other advantage You (or that person) give or intend to give whether directly or indirectly in connection with the Contract; and
  - (iii) promptly notify Teesside University of any breach of this Condition 19.1.

20.2 Failure to comply with Condition 19.1 may result in the immediate termination of the Contract.

**21. ANTI-SLAVERY**

21.1 In performing Your obligations under this Contract, You shall and shall ensure that each of Your employees, agents and subcontractors shall comply with (a) all applicable laws relating to slavery, including the Modern Slavery Act 2015 and (b) Teesside University's Modern Slavery Policy, in force from time to time.

21.2 You shall maintain a complete set of records to trace the supply chain of all Goods and Services provided to Teesside University in connection with the Contract and on reasonable notice during normal business hours on a Business Day allow Teesside University access to such of Your facilities and records (and for us to take copies of records) for the purposes of allowing Teesside University to verify Your compliance.

**22. TERMINATION**

22.1 Without limiting Our other rights or remedies, We may terminate the Contract:

- (a) in respect of the supply of Services, by giving You written notice; and

- (b) in respect of the supply of Goods and/or Equipment, in whole or in part at any time before delivery with immediate effect by giving written notice to You, whereupon You shall discontinue all work on the Contract. We shall pay You fair and reasonable compensation for any work in progress on the Goods and/or Equipment at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss; and
- (c) where the Contract is subject to the Public Contract Regulations 2015 We may terminate this Contract on giving 6 months' notice in writing to You if:
  - (i) the Contract has been subject to a substantial modification which would have a required a new procurement procedure in accordance with Regulation 72(9) of the Public Contract Regulations 2015;
  - (ii) You have, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of Regulation 57(2) of the Public Contract Regulations 2015, and should therefore have been excluded from the procurement procedure; or
  - (iii) the Contract should not have been awarded to You in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty of the Functioning of the European Union.

22.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and/or Equipment and Services are supplied, that party may terminate the Contract in respect of the Goods and/or Equipment, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

22.3 Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to You if:

- (a) You commit a material breach of the terms of the Contract and (if such a breach is remediable) fail to remedy that breach within 30 days of receipt of notice in writing to do so;
- (b) You repeatedly breach any of the terms of the Contract in such a manner as to reasonably justify the opinion that Your conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or (being a company or limited liability partnership) are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay his or her debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (d) You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of You;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of You;
- (f) You (being an individual) are the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of You attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over You (being a company);
- (i) the holder of a floating charge over Your assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over Your assets;
- (k) any event occurs, or proceeding is taken, with respect to You in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 22.3(c) to Condition 22.3(j) (inclusive);
- (l) You suspend or cease, or threaten to suspend, or cease, to carry on all or a substantial part of Your business; or
- (m) You (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

22.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

22.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### **23. CONSEQUENCES OF TERMINATION**

On termination of the Contract for whatever reason, You shall immediately deliver to Teesside University all Deliverables whether or not then complete, and return all University Materials to Teesside University. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned or delivered, You shall be solely

responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

**24. DISPUTE RESOLUTION**

24.1 The parties shall attempt in good faith to negotiate a settlement to any dispute arising between them out of or in connection with this Contract within 30 Business Days of the dispute arising.

24.2 If the dispute cannot be resolved, then the parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure from time-to-time in force.

24.3 To initiate the mediation, a party to the Contract must give notice in writing (the “ADR Notice”) to the other party requesting a mediation in accordance with this Condition 24. The mediation is to take place not later than 30 Business Days after the ADR Notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 Business Days of the ADR Notice, then CEDR shall, at the request of either party, decide the issue for the parties, having consulted with them. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

24.4 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

24.5 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both Teesside University and You.

24.6 If the parties fail to reach agreement within 60 Business Days of the initiation of the mediation, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

24.7 The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings

**25. FORCE MAJEURE**

25.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).

25.2 You shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of Your obligations.

25.3 If a Force Majeure Event prevents, hinders or delays Your performance of Your obligations for a continuous period of more than 30 Business Days, We may terminate the Contract immediately by giving written notice to You.

## **26. GENERAL**

### **26.1 Assignment and other dealings.**

- (a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Our rights or obligations under the Contract.
- (b) You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of Your rights or obligations under the Contract without Our prior written consent.
- (c) In the event that We consent to You subcontracting some or all of Your obligations You will (i) remain responsible for any and all work done and goods and services supplied by all subcontractors and (ii) include provisions in any subcontract which requires payment to be made of all sums due to the subcontractor from You no later than thirty days after the receipt of a valid and undisputed invoice.

26.2 **Audit.** We reserve the right to reasonably request and You hereby agree to supply, any receipts or invoices from Your sub-contractors as We may specify. We and our duly appointed agents shall have full audit rights of all documents produced wholly or partly for the purpose of the Contract including the right to inspect documents and to take copies.

### **26.3 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 26.3(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

- 26.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.
- 26.5 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 26.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 26.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 26.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Teesside University.
- 26.9 **Corporate and Social Responsibility and Equality.**
- (a) Whilst performing the Contract You shall use (and shall ensure any third party supplier to You uses) its reasonable endeavours to conserve energy, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.
  - (b) You acknowledge that We are subject to equal opportunities legislation and undertake that You shall not (and shall ensure any third party supplier to You shall not) unlawfully discriminate for any reason and shall take all reasonable steps to secure Your personnel (or that of any third party supplier) likewise do not unlawfully discriminate.
- 26.10 **Compliance with Laws.**
- (a) In performing Your obligations under the Contract, You shall and shall ensure that each of Your subcontractors shall comply with:
    - (i) all applicable laws, statutes, regulations and codes from time to time in force;



- (ii) any of Our policies as detailed in these Conditions; and
- (iii) UK immigration legislation and to ensure full compliance with the UK Border Agency's guidance for employers on the prevention of illegal working, in accordance with the Immigration, Asylum and Nationality Act 2006 in respect to all staff engaged by You and working at Teesside University (the UK Border Agency's guidance is available at (<https://www.gov.uk/government/collections/employers-illegal-working-penalties#guidance-and-codes-of-practice>)). We expect that proper 'right to work checks', including repeat checks for individuals with limited right to work in the UK, will have been carried out for staff engaged by You and working at Teesside University, and that You comply fully with Your record-keeping and reporting responsibilities for any migrant workers sponsored by You under Tier 2 or Tier 5 of the UK Border Agency's points-based immigration system. You will, on request, provide Teesside University with such documentation as We may require to verify that You have complied with the requirements set out above.

- (b) We may terminate the Contract with immediate effect by giving writing notice to You if You commit a breach of Condition 24.10(a) above.

- 26.11 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 26.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).