

Middlesex University – Purchase of goods – Terms and Conditions (Short Form)

1. Interpretation

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

'Acceptance' means that the Authorised Officer has accepted that the Goods and / or Services as meeting the requirements of the Contract.

'Acceptance Date' means the date on which the Authorised Officer has accepted the Goods and / or Services in accordance with clause 2.4 below.

'Agreement Manager' shall have the meaning as set out in clause 3.1

'Articles' means all tools, materials, drawings, specifications and other equipment and data provided or loaned to the Supplier by the Buyer.

'Authorised' means signed by one of the Buyer's Authorised Officers.

'Authorised Officer' means the Buyer's employee authorised either generally or specifically by the Buyer to enter into the Contract and act on behalf of the Buyer in relation to the Contract.

"Business Day": a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Buyer": shall mean Middlesex University Higher Education Corporation, Hendon, The Burroughs, London NW4 4BT or any wholly owned or associated subsidiary thereof as stated on the Order.

"CDM Regulations": the Construction (Design and Management) Regulations 2007.

"Conditions": the terms and conditions set out in this document as amended from time to time in accordance with clause 34.6.

"Contract": the contract between the Buyer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions as set out in clause 2.

'Data Controller' has the meaning set out in the Data Protection Act 1998

'Data Subject' has the meaning set out in the Data Protection Act 1998

"Deliverables": all documents, products and materials developed by the Supplier or its agents, contractors 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 specification and reports.

"Delivery": as set out in clause 5.

'Delivery Date' means the date set out in the Specification.

'Delivery Instructions' means the instructions set out in the Contract for the provision of the Goods and/or Services, including any other information the Buyer considers appropriate to the provision of the Goods and/ or Services.

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

'Good Industry Practice' means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of Goods and Services similar to the Goods and Services under the same or similar circumstances as those applicable to the Contract.

"Goods Specification": any specification for the Goods, including any related plans and drawings, that is set out by the Buyer to the Supplier.

'Installation' means the installation of the Goods in the designated location and into the operating environment specified by the Buyer at the site and 'Install' shall be interpreted accordingly.

'Intellectual Property Rights' means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

'Key Personnel' means those individuals nominated by the Buyer as being of importance to the completion or delivery of the Services.

'Law' means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body or any approval of any local authority or statutory undertaker having jurisdiction in relation to the Goods and / or Services or with whose systems the Goods are, or are to be, connected. Including, for the avoidance of doubt, the CDM Regulations.

"Order": in the Buyer's purchase order form or overleaf, as the case may be.

'Order Amendment' means an issued and Authorised order amendment from the Buyer or series of Order Amendments. As set out in clause 15.

'Packaging' means any type of package including bags, cases, carboys, cylinders, drums, pallets, tanks, wagons and other containers.

'Personal Data' has the meaning set out in the Data Protection Act 1998

'Premises' means the location(s) where the Goods and Services are to be delivered or performed

'Request' has the meaning set out in the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR)

"Services": the services, including without limitation any Deliverables, Installation, and consequential connection, testing, commissioning or training to be provided by the Supplier under the Contract as set out in the Service Specification.

'Service Levels' means those levels of performance set out in the Service Specification.

"Service Specification": the description or specification for Services, that is set out by the Buyer to the Supplier.

"Specification": any Goods Specification together with any Services Specification

"Supplier": the person or firm from whom the Buyer purchases the Goods and/or Services.

'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006

1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors or permitted assigns.

A reference to a statute or statutory provision is a reference to such statute or 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.

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.

A reference to **writing** or **written** includes faxes.

2. Basis of contract

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with the Contract. To be valid, an Order must bear the Buyer's order number and be Authorised.

2.2 The Contract shall comprise any Order, these Conditions and the Specification(s). In the event of any conflict between the provisions they shall be read in the following order of precedence:

- (a) The Order
- (b) Any attachments to the Order
- (c) The Specification(s)
- (d) The Conditions

2.3 The Contract may be varied by way of an Order Amendment in accordance with clause 15. Each Order Amendment shall have precedence over any earlier Order Amendment.

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

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

at which point the Contract shall come into existence.

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

3. Agreement and Account Management

3.1 The Supplier shall nominate an Agreement Manager who shall have sufficient authority to ensure that required Service Levels are met, to ensure sufficient resources are allocated to the Contract, and to maintain performance to the Specification, to pro-actively co-ordinate and communicate relevant orders and to provide comprehensive support and links between the Buyer and the Supplier.

4. Supply of Goods

4.1 The Supplier shall ensure that the Goods shall:

- (a) be free from defects in design, material and workmanship, correspond with their description and any applicable Goods Specification and shall remain so for 12 months after Acceptance; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgement; and
- (c) be new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship; and
- (d) comply with all applicable Laws.

Middlesex University – Purchase of goods – Terms and Conditions (Short Form)

4.2 Supplier warrants to the Buyer that that the Goods will be provided:

- (a) in a proper, skilful and workmanlike manner.
- (b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice
- (c) in accordance with the Contract.
- (d) to the reasonable satisfaction of the Authorised Officer.

4.3 The Supplier will make good at its expense any defect in the Goods that the Buyer discovers under proper usage during the first twelve months of actual use or 18 months from the date of Acceptance by the Buyer whichever period shall expire first.

4.4 Repairs or replacements will themselves be covered by this Contract but for a period of 12 months from Acceptance by the Buyer.

5. Delivery of the Goods

5.1 The Supplier shall ensure that:

(a) the Goods will be properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The Buyer will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that the Supplier requires returning will be done so at the Supplier's cost and risk;

(b) unless the Goods are proprietary goods of the Seller's design intended for general sale the Supplier shall not without the Buyer's written consent mark the Package or the Goods with any tradename or device whatsoever, but shall mark them as directed by the Buyer.

(c) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Buyer's Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(d) if the Supplier requires the Buyer to return any Packaging to the Supplier, that fact is clearly stated on the delivery note. Any such Packaging shall be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order, or, if no such date is specified, within 3 Business days of the date of the Order;

(b) to the point of delivery stated in the Order, or as instructed by the Buyer prior to delivery; and

(c) during the Buyer's normal business hours, or as instructed by the Buyer.

5.3 Time of Delivery shall be of essence of the Contract.

5.4 The Supplier shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in clause 21.1.

5.5 Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the Buyer may direct.

5.6 The issue by the Buyer of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Buyer shall not be deemed to have accepted any Goods other than in accordance with clause 6.

6. Acceptance

6.1 The Buyer shall have the right to reject the Goods and Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance if they do not conform to the requirements of the Contract.

7. Consumables

7.1 The Buyer reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the Buyer deems appropriate. Such procurement of consumables from a source other than Supplier shall not invalidate the Buyer's rights under the Contract and in no way affect the provisions of clauses 4.1 and 4.2 or otherwise provided that the consumables utilised meet the minimum standards as published by Supplier or the manufacturer of the Goods, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.

7.2 In the event that the Supplier shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to Supplier of meeting its obligations to provide repair or maintain the Goods it shall be for Supplier to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs. If the Supplier shall prove that the consumables do not meet the requisite minimum standards the Buyer shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

8. Spares

8.1 The Supplier shall make available to the Buyer, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts for the Goods as the Buyer shall require.

8.2 The Supplier shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of Delivery or the Acceptance Date, whichever is the latest.

8.3 Such spares or replacement parts shall be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.

9. Operating manuals and as-fitted drawings

9.1 The Supplier shall supply to the Buyer all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation so requested.

10. Attachment to the Goods

10.1 The Buyer shall have the right to attach to, or install into or onto the Goods any other items or goods (including but not limited to software) which the Buyer considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Buyer. If the Buyer attaches or installs such items or goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve Supplier from meeting its obligations under the Contract provided that:-

(a) the goods attached or installed are not specified in any of the Supplier's and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Buyer's rights under the Contract; and

(b) the Supplier has not otherwise notified the Buyer in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the Buyer's rights under the Contract; and

(c) The goods have been attached or installed in accordance with the published instructions of Supplier.

11 Hazardous Goods and Safety

11.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the Buyer on or before Delivery with all data (in English) necessary to allow the Buyer to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Laws.

11.2 Unless specifically agreed, the Goods shall not contain asbestos.

12 Supply of Services

12.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Buyer in accordance with the terms of this Contract.

12.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Buyer.

12.3 In providing the Services, the Supplier shall:

(a) co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer;

(b) perform the Services with the best care, skill and diligence in accordance with Good Industry Practice;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

(d) ensure the Services and the Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Buyer;

(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 the Buyer will be free from defects in workmanship, installation and design;

(g) obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;

(h) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the

Middlesex University – Purchase of goods – Terms and Conditions (Short Form)

purposes of conducting its business, and the Supplier acknowledges that the Buyer may rely or act on the Services.

(i) provide the Services via the Key Personnel (if any) who shall not be released from providing the Services to the Buyer, except for reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Buyer.

13 Progress and Inspection

13.1 The Buyer shall have the right to check progress at the Supplier's manufacturing facilities or offices (including home working) or the offices (including home working) of the Supplier's sub-contractors at all reasonable times to inspect and to reject Goods and Services that do not comply with the Contract. The Supplier's sub-contracts shall reserve such rights for the Buyer. Any inspection or approval shall not relieve the Supplier from its obligations under the Contract.

14 Work on the Premises

14.1 If the Contract involves any Goods and Services which Supplier Delivers or performs on the Premises then the following clauses shall apply:

(a) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to all applicable Laws.

(b) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other person associated with the Supplier will comply with any regulations that the Buyer may notify to the Supplier in writing.

(c) When required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises.

14.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Buyer's prior consent.

14.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Buyer may reasonably require.

14.4 The Buyer shall have the power at any time during the progress of the Contract to order in writing:

(a) the removal from the Premises of any materials which in the Buyer's opinion are either hazardous or not in accordance with the Contract, and/or;

(b) the substitution of proper and suitable materials, and/or;

(c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods and Services which, in respect of material or workmanship, is not in the Buyer's opinion in accordance with the Contract.

14.5 On completion of the Contract the Supplier shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Contract and leave the Premises in a neat and tidy condition within the timescales instructed to the Supplier by the Buyer.

14.6 Any land or Premises made available from time to time to the Supplier by the Buyer in connection with the Contract shall be made available to Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligation under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

14.7 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the Contract.

14.8 The Buyer's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Buyer shall be final and conclusive.

14.9 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the Buyer under this clause 14.

15 Variation & Substitution

15.1 The Buyer shall have the right, before delivery, to send the Supplier an Order Amendment adding to, deleting or modifying the requirements. If the Order Amendment will cause a change to the price, or Delivery Date then the Supplier must suspend performance of the Contract and notify the Buyer without delay, calculating the new price, Delivery Date immediately at the same level of cost and profitability as the original price. The Supplier must allow the Buyer at least ten (10) Business Days to consider any new price or Delivery Date. The Order Amendment shall take effect when, but only if, the Authorised Officer accepts it in writing. Subject to other provisions of the Contract, if the Authorised Officer fails to confirm the Order Amendment within the time stipulated then

performance of the Agreement shall immediately resume as though the Order Amendment had not been issued.

16 Compliance with applicable Laws

16.1 The Supplier shall (at no additional cost to the Buyer) at all times carry out and provide the Goods and Services in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Buyer (or its authorised representative).

16.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms of the Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.

16.3 Without prejudice to the rest of this clause 16, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 16.

16.4 If the Services contain any element which is notifiable for the purposes of the CDM Regulations then the Supplier shall be the principal contractor under the CDM Regulations in respect of those Services and shall perform all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.

16.5 The Supplier shall promptly notify the Buyer of any health and safety hazards, which may arise in connection with the performance of the Contract. The Buyer shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Premises and that may affect the Supplier in the performance of the Contract.

16.6 While on the Premises, the Supplier shall comply with any health and safety measures implemented by or on behalf of the Buyer in respect of Staff and other persons working on those Premises.

17 Service Improvement and Technology Refresh

17.1 The Supplier shall, at its own cost, submit a report to the Buyer within 30 Business Days of the end of each year of the term of the Contract which shall identify the emergence of new and evolving relevant technologies and processes which could improve the Goods and Services. Such report shall be provided in sufficient detail to enable the Buyer to evaluate properly the benefits of the new technology or process.

17.2 The Buyer may benchmark the performance of the Supplier against other providers in the marketplace. In doing so, the Supplier will provide all information to facilitate the process. If the benchmarking reveals there are areas where an alternative provider can offer an improved price, quality or performance the Supplier will be given an opportunity to match such improvements. In the event that no match is available, the Buyer may terminate the Contract without liability.

18 Remedies

18.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the applicable date(s), or if the Goods do not comply with the undertakings set out in clause 4, or the Services do not correspond to clause 12 then, without limiting any of its other rights or remedies, the Buyer shall have the right to any one or more of the following remedies:

(a) to terminate the Contract with immediate effect;

(b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

(d) to require re-performance of the Services;

(e) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party; and

(f) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

18.2 The Contract shall apply to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

18.3 The Supplier shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:

(a) any claim made against the Buyer 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;

Middlesex University – Purchase of goods – Terms and Conditions (Short Form)

(b) any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

(c) the provision of the Goods and Services, including advice and recommendations made and accepted by the Buyer; and

(d) any Installation and/or any Goods and Services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by the Supplier; and

(e) any damage to the Buyer's property or Premises (including any materials, tools or patterns sent to Supplier for any purpose).

This clause 18.3 shall survive termination of the Contract.

18.4 The Buyer's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.

18.5 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event shall take out and maintain:

(a) Product Liability Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and

(b) Professional Indemnity Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and

(c) Public Liability Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and

(d) Employer Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or a series of claims that may arise.

19 Liability

19.1 This clause sets out the Buyer's entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Supplier in respect of any breach by the Buyer of the Contract and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

19.2 Nothing in the Contract limits or excludes the Buyer's liability:

(a) for death or personal injury resulting from the Buyer's negligence; or

(b) for any damage or liability incurred by the Supplier as a result of fraud or fraudulent misrepresentation by the Buyer

19.3 The Buyer shall not be liable for:

(a) loss of profits; or

(b) loss of business; or

(c) loss of contract; or

(d) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

19.4 The Buyer's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract or in respect of any correspondence between the parties (including any competitive process) shall be limited to and shall not exceed £10,000.

20. Title and risk

20.1 Title and risk in the Goods shall pass to the Buyer on completion of Delivery.

21. Price and payment

21.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

21.2 The price of the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Buyer.

21.3 If any import or similar duty is payable where Goods are imported into the United Kingdom from abroad, the Supplier will be responsible for paying it notwithstanding that the duty may subsequently be recoverable from the United Kingdom authorities

21.4 The price of the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Buyer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

21.5 The Supplier may invoice the Buyer after Acceptance. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including but not limited to the relevant Order number.

21.6 Purchase invoices to the University must be sent to the following e-mail address: Paymentsteam@mdx.ac.uk.

21.7 The University shall pay correctly rendered invoices within 30 days of receipt of invoice by the Payments Team. Payment shall be made to the bank account nominated in writing by the Supplier.

21.8 All prices and costs shall be fixed for the first 12 months of the Contract. Any increase in price must be justified and notified to the Buyer at least 30 Business Days before implementation.

21.9 Despite any delays in payment no prompt payment discount shall be forfeited by the Buyer if the Buyer disputes an invoice or if the Seller fails to mark the Order number on the delivery note, statements, packing notes and all other correspondence.

21.10 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

21.11 If a party fails to make any payment due to the other under the Contract by the due date for payment ("due date"), then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England'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 clause shall not apply to payments the defaulting party disputes in good faith.

22. Confidential information

22.1 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products, its services or the existence of the Contract which the receiving party may obtain. Subject to any express provisions of the Contract, the receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

23. Intellectual Property

23.1 All Intellectual Property Rights in any Specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) provided to the Supplier by the Buyer shall remain the Buyer's property absolutely;

(b) prepared by or for the Supplier specifically for the Buyer in relation to the performance of the Contract shall belong to the Buyer.

(c) Pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to the Buyer insofar as it is necessary for the Buyer to exercise its other rights under the Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.

24 Anti-Bribery

24.1 The Supplier shall:

(a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 28.1(b), and will enforce them where appropriate; and

(d) promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

24.2 Breach of this clause 24 shall entitle the Buyer to terminate the Contract with immediate effect.

Middlesex University – Purchase of goods – Terms and Conditions (Short Form)

25 Data Protection

25.1 The Supplier shall process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the Buyer's instructions from time to time and shall not process the Personal Data for any other purpose. The Supplier will keep a record of any processing of Personal Data it carries out under the Contract.

25.2 The Supplier shall promptly comply with any request from the Buyer requiring the Supplier to amend, transfer or delete the Personal Data.

25.3 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 1998 which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be fair.

25.4 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Buyer.

25.5 The Supplier shall promptly inform the Buyer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable or if the Supplier becomes aware of any unauthorised or unlawful processing. The Supplier will restore such Personal Data at its own expense.

25.6 The Supplier shall notify the Buyer within 2 Business Days if it receives a request from a Data Subject for access to that person's Personal Data.

25.7 The Supplier shall provide the Buyer with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.

25.8 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Buyer or as provided for in this Contract.

25.9 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Buyer against all costs, claims, damages or expenses incurred by the Buyer or for which the Buyer may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 25.

26. Termination

26.1 Without limiting its other rights or remedies the Buyer may terminate the Contract:

(a) in respect of the supply of Services, by giving the Supplier 2 weeks' written notice; and

(b) in respect of the supply of Goods, at any time before Delivery with immediate effect by giving the Supplier written notice, in which case the Buyer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. No compensation shall be payable where the Seller fails to make adequate progress against the Order.

26.2 The Buyer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

(a) the Supplier commits a material or persistent breach of the Contract and (if such breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;

(b) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its 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;

(c) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;

(d) the Supplier's financial position deteriorates to such an extent that in the Buyer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(e) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

27. Consequences of Termination

27.1 On termination of the Contract for any reason:

(a) where the Services are terminated, the Supplier shall immediately deliver to the Buyer all Deliverables, whether or not then complete, and

return the Articles. If the Supplier fails to do so, then the Buyer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall solely be responsible for their safe keeping and will not use them for any purpose not connected to this Contract;

(b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

28. Force majeure

28.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the Buyer may terminate this Contract immediately by giving written notice to the Supplier.

29 Freedom of Information and Environmental Information Regulations

29.1 The Supplier acknowledge that the Buyer is subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the Buyer (at the Supplier's expense) as mandated by the Buyer in relation to these laws.

29.2 Any Requests received by the Supplier shall be forwarded to the Buyer immediately.

29.3 The provisions of this clause 29 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.

30 Articles on Loan

30.1 All Articles loaned by the Buyer to the Supplier in connection with the Contract shall remain always the Buyer's property and shall be surrendered to the Buyer upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Supplier solely for the purpose of completing the Contract.

31 Re-tendering and Handover

31.1 Within twenty one (21) days of being so requested by the Buyer, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Buyer to issue invitations to tender for the future provision of the Goods and Services.

32.2 Where, in the opinion of the Buyer, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 32.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to): -

(a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and

(b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and

(c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.

32.3 The Supplier shall indemnify the Buyer against any claim made against the Buyer at any time by any person in respect of the liability incurred by the Buyer arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under clause 32.1.

32.4 The Supplier shall co-operate fully with the Buyer during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

Middlesex University – Purchase of goods – Terms and Conditions (Short Form)

33. TUPE

33.1 The Supplier shall indemnify and keep indemnified the Buyer against any loss incurred by the Buyer connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the Buyer in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.

33.2 The Supplier shall indemnify and keep indemnified the Buyer against any loss incurred by the Buyer connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the Buyer at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the Buyer or its employees.

33.3 Except with the proper written consent of the Buyer, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the Buyer has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract for the provision by it of the Goods and Services.

34. General

34.1 Assignment and subcontracting.

(a) The Buyer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

(b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Buyer's prior written consent.

34.2 Notices.

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to the that party at its registered office (if it is a company) or its principal place of business (in the case of the Buyer: the University Procurement Office, Middlesex University, Hendon, The Burroughs, London NW4 4BT) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.

34.3 Severance.

If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

34.4 Waiver. A waiver of any right or remedy under the Contract 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

34.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

34.6 Variation. Except as set out in the Contract, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Buyer.

34.7 Governing law and jurisdiction. 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.