

GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF SERVICES

—CONFIDENTIAL—

1. Definitions

In these Conditions, unless the context requires otherwise:

'Client' means the person, company or organisation whose name and address are specified as such on the Quotation;

'Conditions' means the terms and conditions set out in this document and attached Quotation (which is incorporated into and made a part of this Contract) and any special terms and conditions agreed in writing by the University;

'Contract' means these Conditions and the terms specified below and in the Quotation;

'Price' means the University's price specified in the Quotation for the performance of the Work and, if applicable, the sale of any goods excluding carriage, packing, insurance and VAT;

'Quotation' means the attached document detailing the services to be supplied and the University's price for the performance of the services;

'University' means the University of Chester of Parkgate Road, Chester, Cheshire, CH1 4BJ, United Kingdom;

'Work' means the services specified in the Quotation.

2. Conditions applicable

These Conditions shall apply to all contracts for the performance of services and/or sale of any goods by the University to the Client to the exclusion of all other terms and conditions, including any terms or conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document. All orders from the Client shall be deemed to be an offer to purchase on these Conditions.

3. Scope of the Contract

The University hereby agrees to carry out the Work for the Client, subject to the Conditions, in consideration of payment by the Client to the University of the Price. Charges for any additional services required by the Client which are not included in the Quotation will be agreed between the Client and the University and confirmed in writing, before such additional services are undertaken.

4. Time

4.1 The University shall use reasonable endeavours to perform the Work by any time notified by the Client, but time shall not be of the essence of performance of the Work and the University shall not be liable for any loss to the Client of any nature, direct or indirect, resulting from any delay in completion of the Work, however caused or arising.

4.2 On completion of the Work the Contract shall automatically terminate other than conditions 6, 7, 8, 10 and 17 which shall continue indefinitely.

5. Price, Expenses and Payment

5.1 The Client shall pay the Price to the University in the manner specified in the Quotation. The Price is exclusive of VAT which shall be due, if applicable, at the rate ruling on the date of the University's invoice. Payment of the Price and VAT shall be due in full within 30 days of the date of the University's invoice. Time for payment shall be of the essence.

5.2 The Client shall not be entitled to deduct or withhold from or set off against any payment due to the University under the Contract, any amount or claim which may be due to or which may be alleged to be due to the Client from the University on any account.

5.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Royal Bank of Scotland plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.

5.4 Unless otherwise agreed in writing between the Client and the University, any travelling and other out-of-pocket expenses incurred by

the University in performing the Contract will be charged to the Client at the University's normal rates and will be in addition to the Price.

6. Confidentiality

The University will use reasonable endeavours to ensure that any information disclosed by the Client will be kept confidential, except where the information:-

- a) is in the possession of, and is at the free disposal of, the University and its employees or agents or is published or is otherwise in the public domain prior to the receipt of such information by the University;
- b) currently is or becomes available through no fault of the University or its servants or agents;
- c) is received in good faith by the University or its servants or agents from a third party; or
- d) is required to be disclosed by law.

7. Publicity/Publication

7.1 The text of any press release or other communication to be published by or in the media concerning the Contract shall require the prior written approval of the University.

7.2 The Client acknowledges that the University may wish to draw on the Work to enhance the University's teaching and research activities, for example in the form of case studies, student projects, publications or background intellectual property for other projects. The University will endeavour to keep the Client fully informed about such activities, and agrees not to disclose any confidential aspects of the Work without the prior approval of the Client, such approval not to be unreasonably withheld.

8. Ownership of Intellectual Property

All new intellectual property rights arising exclusively from carrying out the Work shall become the property of the Client unless agreed otherwise in writing between the parties. Any background intellectual property shall remain the property of the originating party. The Client grants the University an irrevocable, royalty-free licence to use all such intellectual property rights of the Client for the purposes envisaged in condition 7.2 and for the purposes of teaching, learning and research.

9. Title and Risk in Goods

Title to any goods supplied by the University to the Client under the Contract shall not pass until the Client has paid the University's invoice therefore in full. Risk in any such goods shall pass to the Client.

10. Limitation of Liability

The Client's attention is particularly drawn to the provisions of this condition:

10.1 This condition 10 sets out the entire financial liability of the University (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:-

- a) any breach of the Contract;
- b) any use made by the Client of the Work, any goods supplied under the Contract, any deliverables or any part of them; and
- c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 Nothing in these Conditions limits or excludes the liability of the University for:-

- a) death or personal injury resulting from negligence; or
- b) any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the University.

10.3 All express or implied warranties, conditions and other terms are, to the fullest extent permitted by law, excluded from the Contract, save to the extent set out in these Conditions.

10.4 The University gives no assurance or undertaking that the Work will be undertaken by any specific individual or that it will achieve any particular purpose, aim or target of or required by the Client unless specified to the contrary in the Contract.

10.5 The University will perform the Work with reasonable skill and care, provided always that the Client has complied with its obligations under the Contract.

10.6 The University warrants that any goods supplied under the Contract will at the time of delivery correspond to the description given by the University.

10.7 Subject to the foregoing provisions of this condition, the University shall not be liable for any loss of profits; loss of business; loss of goodwill, reputation and/or similar loss; loss of anticipated savings; loss of goods; loss of use or loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, suffered by the Client, howsoever arising.

10.8 The University'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 shall be limited to the Price.

11. Obligations of the Client

11.1 The Client shall give the University such access to the Client's premises, information, records and other material as the University may reasonably require to perform the Contract. Further, the Client shall:-

- a) inform the University of the rules and regulations which are then in force for the conduct of personnel on the Client's premises;
- b) make available, if necessary, such working space and facilities at the Client's premises as the University may reasonably require for its employees;
- c) make available appropriate personnel to liaise with the University's employees;
- d) secure and otherwise keep safe all and any property of the University's employees while they are on the Client's premises; and
- e) bear full responsibility for the University's employees while they are on the Client's premises, and indemnify the University accordingly.

11.2 The Client shall supply the University free of charge with such information, documents, materials, instruments, or equipment, as the University may need to perform its obligations under the Contract.

11.3 The Client shall fully and effectually indemnify the University and keep it indemnified against all actions, proceedings, costs, claims, demands and liability which may be taken against, suffered by or incurred by the University arising directly or indirectly from any failure on the part of the Client to perform its obligations under the Contract.

11.4 The Client hereby agrees that neither it nor its holding company nor any subsidiary nor any subsidiary of its holding company will during the currency of the Contract and for the period of 12 calendar months after its expiry or termination whether by itself, its officers, employees, agents or otherwise howsoever enter into a contract or arrangement whether as a consultant, principal, partner, director, employee or otherwise directly or indirectly with any employee or agent of the University who has provided services under the Contract or in connection with the performance of the Work, except if previously agreed in writing between the University and the Client.

12. Assignment and Sub-contracting

The Contract shall be binding on and endure for the benefit of each party's successors and personal representatives and the University's assigns. The Client shall not assign all or any part of its rights or benefits under the Contract and shall not delegate, transfer or sub-contract its obligations in whole or in part. The University may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

13. Termination

13.1 Either party may terminate the Contract at any time by giving the other party not less than six months' notice in writing to that effect.

13.2 Either party may terminate the Contract forthwith by notice in writing if the other:-

- a) commits a serious breach of any of the terms of the Contract; or
- b) commits a breach of the Contract which, in the case of a breach capable of remedy, shall not have been remedied within 30 days

of the receipt by one party of a notice from the other party identifying the breach and requiring remedy; or

- c) is unable to pay its debts or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver or manager or administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.

13.3 In the event of termination of the Contract, the Client shall pay the University for all work carried out prior to the date of termination.

14. Force Majeure

The University shall not be liable to the Client if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

15. Arbitration

The parties shall use all reasonable endeavours to settle amicably any question, difference or dispute arising out of or in connection with the Contract (including, without limitation, any question regarding its existence, validity or termination). If the parties fail to settle the question, difference or dispute within a reasonable period, then either party may refer it to a single arbitrator who shall be agreed between the parties or, failing such agreement within 30 days of the request by one party to the other that the matter be referred to arbitration in accordance with this condition, then either party may apply to the President for the time being of the Chartered Institute of Arbitrators to appoint the arbitrator. The decision of the arbitrator shall be final and binding upon the parties. Any reference under this paragraph shall be to arbitration within the meaning of the Arbitration Act 1996.

16. Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with English Law and the parties hereby submit for all purposes in connection with the Contract to the non-exclusive jurisdiction of the English courts.

17. Entire Agreement

The Contract constitutes the entire agreement between the parties and supersedes all prior, oral and written agreements, understandings or arrangements relating to the subject matter of the Contract. Neither party shall be entitled to rely on any agreement, understanding, representation or arrangement which is not expressly set forth in the Contract.

18. Third Party Rights

18.1 A person who is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

18.2 The rights of the parties to terminate rescind or agree any variation, waiver or settlement under the Contract is not subject to the consent of any person that is not a party to it.

19. Variation

The Contract shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.

20. Notice

All correspondence and notices relating to the Contract should be addressed

- a) in the case of the University to the Research and Knowledge Transfer Office, University of Chester, Parkgate Road, Chester, CH1 4BJ.
- b) in the case of the Client to the project coordinator named in the Quotation.