

**UNIVERSITY OF THE HIGHLANDS AND ISLANDS AND ITS SUBSIDIARIES
STANDARD TERMS AND CONDITIONS
[FOR CONTRACTS BELOW OJEU THRESHOLD]**

1 Interpretation and Application

- 1.1 In these conditions of contract ("the Conditions"), the meanings given to defined terms and the rules of interpretation in Clause 26 will apply.
- 1.2 If no Goods are to be supplied in accordance with the Contract, Clauses 2, 3 and 4 will not apply. If no Services are to be supplied in accordance with the Contract, Clause 5 will not apply.

2 Goods and Packaging

- 2.1 The Goods must be to the reasonable satisfaction of the Purchaser, conform in all respects with the requirements of the Contract, and be fit for the purpose for which such goods are ordinarily used.
- 2.2 The Contractor must use only the minimum adequate amount of packaging material to prevent contamination of or damage to the Goods, and packaging material is designed and produced in such a way as to facilitate its re-use or recycling.
- 2.3 All containers of hazardous goods shall bear internationally recognised danger symbols and in addition, in English, prominent and adequate warnings and a full description of the Goods.

3 Delivery and Acceptance/Rejection of Goods

- 3.1 Delivery of the Goods shall be made at such times and to such locations as the Contract specifies. The time and date of delivery is of the essence.
- 3.2 The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods or acceptance of the Contractor's terms and conditions regardless of any statements made on the delivery note.
- 3.3 The Purchaser may at any time within 30 days of delivery, reject all or any of the Goods which fail to meet the requirements of the Contract, and may choose (without prejudice to any other rights) to have any rejected Goods repaired or replaced by the Contractor within a reasonable time, or to obtain a refund. The Contractor will uplift any rejected Goods without delay.
- 3.4 Property to and risk in the Goods shall pass to the Purchaser when the Goods have been delivered to the Purchaser in accordance with Clause 3.1.

4 Guarantee of Goods

- 4.1 The Goods shall be guaranteed by the Contractor for the period of 18 months from the delivery of the Goods. Without prejudice to any of the Purchaser's other rights, any defect in any of the Goods arising during the guarantee period under proper and normal use of the Goods shall be remedied by the Contractor, without delay.

5 Performance of Services

- 5.1 To the extent that any Services are to be provided in accordance with the Contract they shall be provided by the Contractor in accordance with the Contract with all reasonable skill, care and diligence.
- 5.2 The Contractor will provide reports showing the progress of the provision of the Services and the associated costs, as and when reasonably requested by the Purchaser.
- 5.3 The Contractor will ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing any advisory or professional services under the Contract.

6 Payment

- 6.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Contract. The Purchaser shall pay the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor. All invoices must quote a valid purchase order as issued by the Purchaser. The Contractor shall include a provision in each Sub-Contract requiring the Contractor to pay the relevant Sub-Contractor not more than 30 days after the receipt of a valid and payable invoice.
- 6.2 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice.
- 6.3 The Charges represent the entire amount payable by the Purchaser to the Contractor in respect of the performance of the Contractor's obligations under the Contract, and except as otherwise expressly stated to the contrary in the Contract, the Purchaser shall not be liable to the Contractor for any of its costs, expenses or liabilities.

7 Access to Premises

- 7.1 If the Contract requires the Contractor to take access to or occupation of any Premises, the dates, times and manner of occupation shall be agreed between the Parties, each acting reasonably.
- 7.2 The Purchaser may refuse to admit to the Premises any Contract Worker whose admission would be, in the opinion of the Purchaser, undesirable.
- 7.3 The Contractor shall comply with (and procure that all Contract Workers comply with) all reasonable instructions given by the Purchaser in relation to the access to and use of the Premises.
- 7.4 All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Contract shall be and remain at the sole risk of the Contractor, whether or not they are situated at any Premises.
- 7.5 If the Purchaser so directs, the Contractor will submit a basic disclosure certificate obtained from Disclosure Scotland in respect of any Contract Workers who require access to any Premises, prior to such access being taken.

8 Issued Property

- 8.1 All Issued Property shall remain the property of the Purchaser and shall be used by the Contractor only for the purposes of the Contract. Issued Property which is unused or held by the Contractor on the termination or expiry of the Contract shall be returned without delay to the Purchaser.

9 Contract Workers

- 9.1 The Contractor shall engage, employ, and train suitably experienced and qualified staff for carrying out the Contractor's duties and obligations under the Contract.
- 9.2 Nothing in the Contract shall have the effect of making any Contract Worker an employee of the Purchaser.

10 Indemnity

- 10.1 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with anything done or omitted to be done in connection with the Contract by the negligence or other wrongful act or omission of any Contractor Party.

11 Insurance

- 11.1 On the request of the Purchaser, the Contractor shall exhibit satisfactory evidence of the insurance policies required by law or required specifically by this Contract, together with satisfactory evidence of payment of the premia.

12 Intellectual Property Rights

- 12.1 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with any infringement of any Intellectual Property Right of any third party in the performance of the Contract.
- 12.2 All rights (including ownership and Intellectual Property Rights) in any reports, documents, specifications, instructions, plans, drawings, images, patents, models or designs whether in writing, or on magnetic or other media or distributed electronically:
- 12.2.1 forming Issued Property or otherwise made available to the Contractor by the Purchaser shall remain vested in the Purchaser; or
 - 12.2.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in the Purchaser.

13 Termination

- 13.1 The Purchaser may at any time by notice in writing terminate the Contract if:
- 13.1.1 there is an Insolvency Event; or
 - 13.1.2 there is an Un-remedied Default.

13.2 The Purchaser shall be entitled to terminate the Contract by giving not less than 30 days' notice to the Contractor.

13.3 If the Contractor or any Contract Worker commits any offence relating to corruption in relation to this Contract, the Purchaser may at any time by notice in writing terminate the Contract.

14 Consequences of Termination

14.1 The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

14.2 Termination of the Contract will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive termination or expiry.

15 Variations to the Contract

15.1 The Contract constitutes the entire agreement between the parties at its date of execution in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract.

15.2 The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of each of the parties.

16 Confidentiality

16.1 Subject to Clause 16.2, all information of a confidential nature obtained by the Contractor under or in connection with the Contract from the Purchaser will be treated by the Contractor in confidence, and the Contractor will not use it for other purposes or disclose it other than to the extent required to perform the Contract.

16.2 Clause 16.1 does not prohibit the disclosure by the Contractor of any information of a confidential nature which the Contractor is obliged by law to disclose, or which is legitimately known to the Contractor other than through its disclosure to the Contractor by the Purchaser.

17 Freedom of Information

17.1 The Contractor acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Contractor will provide such assistance and co-operation as the Purchaser may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation

17.2 The Purchaser will be entitled to determine at its absolute discretion whether to disclose upon request or otherwise publish any information under the Information Legislation, including (although not only) any information provided to it by the Contractor or which relates in any way to the Contractor or the Contract.

17.3 Without affecting Clause 17.2, the Purchaser will use reasonable endeavours to consult with the Contractor in accordance with the relevant code of practice before disclosing or otherwise publishing under the Information Legislation any information provided to it by the Contractor or which relates in any way to the Contractor or the Contract.

18 Publicity

18.1 The Contractor will not disclose that the Purchaser is a customer or client of the Contractor to any third party or use the Purchaser's name and/or brand in any promotion or marketing, unless:

18.1.1 it is necessary for the Contractor to properly discharge the Contract or to comply with a legal requirement;

18.1.2 the Contractor has obtained the prior written consent of the Purchaser.

19 Assignment and Sub-contracting

19.1 The Contractor shall not assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof without the previous consent in writing of the Purchaser.

19.2 The Contractor shall remain fully liable for the actions and defaults of all of its Sub-contractors. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Contract. The Contractor will procure that its Sub-Contractors comply with all the relevant obligations of the Contract in the same way as the Contractor is bound to comply.

20 Notices

20.1 Notices must be sent by post or delivered by hand to the relevant address detailed in the Contract Award Letter (or any substitute address notified). If posting or delivery is proved, a notice shall be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

21 Remedies

21.1 The failure of either party to insist upon the performance or the strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Contract.

21.2 Except as otherwise expressly provided in the Contract:

21.2.1 all remedies available to a party under the Contract are cumulative and may be exercised concurrently or separately; and

21.2.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.

22 Audit Access

- 22.1 The Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser access to all of the Records for all reasonable audit and investigation purposes.

23 Relationship

- 23.1 The Contract shall not have the effect of making any Contractor Party the agent of the Purchaser, and the Contractor will procure that no Contractor Party and no Contract Worker, by act or omission, purports to act as agent of the Purchaser, or leads any party to believe that such a relationship of agency exists.

24 Tax Arrangements of the Contractor

- 24.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 24.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 24.3 The Purchaser may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with Clauses 24.1 and 24.2 above or why those Clauses do not apply to it.
- 24.4 A request under Clause 24.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 24.5 The Purchaser may supply any information which it receives under Clause 24.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

25 Anti-Bribery

- 25.1 The Contractor shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements').
- 25.2 The Contractor shall 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.

26 Definitions and Interpretation

26.1 In these Conditions, unless the context otherwise requires:

- 26.1.1 “**Contract**” means the contract concluded between the Purchaser and the Contractor formed by the Contract Award Letter and the documents referred to in the Contract Award Letter;
- 26.1.2 “**Contract Award Letter**” means the letter issued by the Purchaser to the Contractor notifying the Contractor of its award of the Contract and listing the documentation which, together with these Conditions, forms part of and constitutes the Contract;
- 26.1.3 “**Contractor**” means the party contracting with the Purchaser and identified in the Contract Award Letter;
- 26.1.4 “**Charges**” means the charges and fees payable as set out in the Contract;
- 26.1.5 “**Contractor Party**” means the Contractor and any Sub-Contractor;
- 26.1.6 “**Contract Worker**” means an officer, servant, employee or agent of a Contractor Party, and any person on or at the Premises in connection with the Contract at the express or implied invitation of the Contractor or any other Contract Worker;
- 26.1.7 “**Default**” means non-compliance with or default against any obligation under the Contract by the Contractor;
- 26.1.8 “**Goods**” means the goods to be supplied by the Contractor to the Purchaser as specified in the Contract, and includes any materials, goods or equipment to be provided by the Contractor in the delivery of the Services;
- 26.1.9 “**Information Legislation**” means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;
- 26.1.10 “**Insolvency Event**” has the meaning given in Clause 26.2
- 26.1.11 “**Intellectual Property Rights**” means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);
- 26.1.12 “**Issued Property**” means anything issued or otherwise made available to the Contractor for any purpose by or on behalf of the Purchaser including working papers and other written materials;
- 26.1.13 “**Premises**” means any premises of the Purchaser being a location where Goods are to be delivered or Services are to be provided;
- 26.1.14 “**Purchaser**” means the University of the Highlands and Islands and any of its subsidiaries;

- 26.1.15 “**Records**” means any files, documents, information or data which relate to delivery of the Contract or the management, administration, organisation or planning of them whether in writing or on magnetic or other media;
- 26.1.16 “**Services**” means the services to be provided by the Contractor to the Purchaser as specified in the Contract;
- 26.1.17 “**Sub-Contract**” means any contract or proposed contract between the Contractor and any third party in respect of the performance of the Contract (or any part thereof). The terms “Sub-Contractor” and “Sub-Contracting” shall be similarly construed; and

26.1.18 **"Un-remedied Default"** means that the Contractor is in Default and:

26.1.18.1 the Default is capable of remedy and the Contractor has failed to remedy such Default within 30 days of receipt of written notice to the Contractor specifying the Default and requiring its remedy; or

26.1.18.2 the Default is not capable of remedy.

26.2 In these Conditions, unless the context otherwise requires:

26.2.1 where the Contractor is a Company, **"Insolvency Event"** means that:

26.2.1.1 the Contractor passes a resolution for winding-up or the court makes a winding-up order, other than for the purpose of a genuine and good faith reconstruction or amalgamation which the Purchaser has consented to in advance;

26.2.1.2 the Contractor passes a resolution for administration;

26.2.1.3 an administrator, administrative receiver, receiver or manager is appointed to the Contractor by a creditor or by the court, or possession is taken of any of the Contractor's property under the terms of a floating charge;

26.2.1.4 the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the reference in section 123(1)(a) to £750 was to £10,000); or

26.2.1.5 any similar event occurs under the law of any other jurisdiction.

26.2.2 where the Contractor is an individual, **"Insolvency Event"** means that:

26.2.2.1 a petition is presented for the Contractor's bankruptcy or the sequestration of the Contractor's estate;

26.2.2.2 a criminal bankruptcy order is made against the Contractor;

26.2.2.3 the Contractor makes any composition or arrangement with or for the benefit of the Contractor's creditors, or makes any conveyance or assignation for the benefit of the Contractor's creditors, or an administrator is appointed to the Contractor's affairs;

26.2.2.4 the Contractor becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

26.2.2.5 any similar event occurs under the law of any other jurisdiction.

26.2.3 where the Contractor is a partnership or firm, or a number of persons acting together in any capacity, **"Insolvency Event"** means that:

26.2.3.1 an event listed in Clauses 26.2.2.1 to 26.2.2.5 occurs in respect of any partner in the partnership or firm or any of those persons;

26.2.3.2 a petition is presented for the Contractor to be wound up as an unregistered company; or

26.2.3.3 any similar event occurs under the law of any other jurisdiction.

26.3 In these Conditions, unless the context otherwise requires:

26.3.1 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;

26.3.2 the singular includes the plural and vice versa;

26.3.3 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;

26.3.4 the word “including” means “including without limitation”;

26.3.5 a reference to “approval” or “consent” shall mean consent in writing; and

26.3.6 if more than one person is detailed in the Contract as the Contractor, references in this Contract to the “Contractor” shall be interpreted and construed as each such person on a joint and several basis.

27 Law and Jurisdiction

27.1 These Conditions and the Contract shall be governed by and construed in accordance with the law of Scotland and the Scottish Courts will have authority to settle any dispute. The Contractor may only raise an action against the Purchaser in the Scottish Courts.