

University of
HUDDERSFIELD

**Standard Purchase of Goods Agreement
(Continuous Supply of Goods)**

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BACKGROUND

(A) The Supplier wishes to supply to the Customer, and the Customer wishes to receive, the Goods on and subject to the terms and conditions of this Agreement.

1. DEFINITIONS AND INTERPRETATION

In this Agreement and Contracts:

1.1 the following words and expressions have the following meanings unless the context requires otherwise:

“Anti-Slavery Laws” any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act

“Applicable Law” any:
(a) law including any statute, statutory instrument, bye-law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal);
(b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or
(c) industry code of conduct or guideline
which relates to this Agreement and/or a Contract and/or the Goods

“Authority” any government, agency, regulator or prosecutor

“Business Day” a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales

“CFA” the Criminal Finances Act 2017

“CFA Offence” an offence under section 45 or section 46 of the CFA

“Collection” has the meaning given to it in **clause 3.7.2**

“Confidential Information” has the meaning given to it in **clause 20.3**

“Contract” has the meaning given to it in **clause 3.1**

“Delivery” has the meaning given to it in **clause 5.1**

“Disputed Sum” has the meaning given to it in **clause 13.10**

"EIRs"	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant authority to such Regulations
"Facilitation of Tax Evasion Offence"	a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence, as those terms are defined in the CFA
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant authority in relation to such Act
"Further Warranty Period"	the Further Warranty Period of 1 year, unless an alternative period is agreed and set out in the [Purchase Order] OR [Request for Quotation Document]
"Goods"	the goods set out in a Purchase Order
"Information"	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form)
"Insolvent"	means a party: <ul style="list-style-type: none"> (a) has a receiver, administrator or provisional liquidator appointed; (b) is subject to a notice of intention to appoint an administrator; (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring); (d) has a winding up order made by a court in respect of it; (e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring); (f) ceases to carry on business; (g) has any steps or actions taken in connection with any of these procedures; or (h) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.
"Intellectual Property Rights"	all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade

marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions

"IPR Claim"	has the meaning given to it in clause 11.2
"Modern Slavery Act"	the Modern Slavery Act 2015
"Modern Slavery Practice"	any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited
"Order Acknowledgment"	the Supplier's written acceptance of the Purchase Order
"Prices"	the prices for the Goods set out in the [Purchase Order] OR [Request for Quotation Document]
"Purchase Order"	the Customer's written order for the supply of Goods by the Supplier to the Customer on the terms and conditions of this Agreement
"Request for Information"	a Request for Information under the FOIA or the EIRs
"Required Insurances"	the Required Insurances set out in clause 12
"Site"	any site from time to time owned, leased or otherwise occupied or used by the Customer
"Specification"	the written technical specification for the Goods set out in or referred to in [Purchase Order] OR [Request for Quotation Document]
"Supplier Personnel"	any person employed or engaged by the Supplier who is wholly or partly engaged in the provision of the Goods
"Termination Date"	the date on which this Agreement expires or terminates for whatever reason
"Warranty Period"	the Warranty Period of 3 years, unless an alternative period is agreed and set out in the [Purchase Order] OR [Request for Quotation Document]

- 1.2 all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.3 the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.5 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.6 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and
- 1.7 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.

2. SCOPE OF AGREEMENT

- 2.1 This Agreement sets out the terms and conditions on which the Supplier will supply and the Customer will purchase Goods during the Term.
- 2.2 This Agreement will be deemed to have commenced on the Start Date and will continue until terminated by either party giving not less than 90 days' written notice to that effect to the other party. This Agreement may be terminated earlier in accordance with the terms of this Agreement.

3. CONTRACT FORMATION

- 3.1 The Customer's Purchase Order constitutes an offer by the Customer to purchase the goods set out in the Purchase Order from the Supplier on the terms and conditions of this Agreement. A contract for the supply of Goods by the Supplier to the Customer on the terms and conditions of this Agreement (the "**Contract**") will be formed when the Customer receives the Supplier's Order Acknowledgement.
- 3.2 The terms and conditions of this Agreement are the only terms and conditions on which the Customer will purchase goods from the Supplier and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in this Agreement or any Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 3.3 Delivery will be deemed conclusive evidence of the Supplier's acceptance of the terms and conditions of this Agreement.
- 3.4 The Supplier may not cancel a Contract. The Customer may cancel a Contract in whole or in part immediately by giving written notice to that effect to the Supplier at any time before delivery of the Goods in accordance with **clause 5.1**. If the Customer exercises its right of cancellation under this **clause 3.4** the Customer's sole liability will be to pay the Supplier fair and reasonable compensation for work-in-

progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

- 3.5 The Customer may, by giving written notice to that effect to the Supplier before the delivery date set out in the Purchase Order vary the quantity or type of the Goods ordered, the delivery date or address, and/or the Specification (a "**Purchase Order Amendment**"). If the Purchase Order Amendment will cause a change to the Prices or delivery date then the Supplier must suspend performance of the relevant Contract and notify the Customer without delay, calculating the new Price and revised delivery date. The Supplier must allow the Customer at least ten Business Days to consider any new Price and revised delivery date and the Purchase Order Amendment shall be binding on the Customer and the Supplier when the Customer's authorised representative accepts in writing the new Price and revised delivery date within such period. If the Customer's authorised representative fails to accept in writing the new Prices and revised delivery date, then performance of the relevant Contract shall immediately resume as though the said Purchase Order Amendment had not been issued (except that the Customer may still exercise its right of cancellation in accordance with **clause 3.4**).
- 3.6 The Supplier may not deliver the Goods by separate instalments unless the Customer gives its prior written consent to this. If the Customer gives such consent, the Supplier will invoice the Price for each instalment separately in accordance with **clause 13.4** and the Customer will be entitled, at its sole discretion, to exercise its rights and remedies (whether under this Agreement, the relevant Contract or otherwise) in respect of the relevant instalment or the whole Contract.
- 3.7 Without prejudice to the Customer's rights under **clause 8**, the Customer may, by giving written notice to that effect to the Supplier within 90 days following the date of Delivery of the Goods, return the Goods (in whole or part) to the Supplier, and following receipt of such notice by the Supplier:
- 3.7.1 the Supplier will, at the Supplier's cost and expense, collect the Goods from the address specified in the Purchase Order and will load them onto the collecting vehicle. The Supplier will collect the Goods during University Business Hours within a period of 30 days following receipt of the Customer's notice under this **clause 3.7**.
- 3.7.2 Collection of the Goods will be deemed to occur:
- 3.7.2.1 at the time of collection (prior to loading); or
- 3.7.2.2 if earlier, on expiry of the period for collection specified in **clause 3.7.1**
- ("Collection").
- 3.8 Upon Collection of the Goods in accordance with **clause 3.7** the Supplier will issue a credit note to the Customer equivalent to the Price of the relevant returned Goods, together with value added tax thereon, and against which the Customer may purchase future goods from the Supplier under the terms and conditions of this Agreement.
- 3.9 Risk in and ownership of the Goods will pass to the Supplier upon Collection.

4. THE GOODS

- 4.1 The quantity and description of the Goods will be as set out in the Purchase Order.
- 4.2 The Customer has the right to inspect and test the Goods at any time prior to Delivery. The Supplier will permit the Customer, its officers, employees, agents and sub-contractors to enter the Supplier's premises on reasonable notice, and will

procure permission for such persons to enter upon any relevant third party premises (including any of the Supplier's sub-contractors or supply chain partners), to carry out such inspection and testing and will provide the Customer with all facilities reasonably required.

- 4.3 If, following inspection or testing under **clause 4.2**, the Customer gives written notice to the Supplier that the Customer is not satisfied that the Goods will comply with **clause 8.1**, the Supplier will take all steps necessary to ensure compliance. Any breach of this obligation by the Supplier will be deemed to be a material breach entitling the Customer to terminate the relevant Contract under **clause 18.1**.
- 4.4 No inspection or testing under **clause 4.2** will reduce or otherwise affect the Supplier's obligations under this Agreement and/or a relevant Contract.
- 4.5 The Supplier will maintain, and will procure that all of its sub-contractors and supply chain partners maintain, detailed quality control records in respect to, and in connection with, the Goods and will permit the Customer, its officers, employees, agents and sub-contractors to inspect and take copies of these records on demand.
- 4.6 The Supplier shall ensure all Goods comply with Applicable Law including, but not limited to, in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all provisions relating to food safety.

5. DELIVERY

- 5.1 The Supplier will deliver the Goods to the address specified in the Purchase Order on the date specified in the **[Purchase Order] OR [the Request for Quotation document]**. The Supplier will be responsible for off-loading the Goods from the delivery vehicle. Delivery of the Goods ("**Delivery**") will occur when they have been off-loaded at the delivery address.
- 5.2 The Supplier will ensure that:
 - 5.2.1 the Goods are marked in accordance with the Customer's instructions and any Applicable Law and are properly packed and secured so as to reach their destination in an undamaged condition; and
 - 5.2.2 on or before Delivery the Customer is supplied with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and repair of the Goods.
- 5.3 The Supplier will notify the Customer promptly of any likely delay in delivering the Goods on the date specified in a relevant **[Purchase Order] OR [the Request for Quotation document]**.
- 5.4 If the Supplier fails to deliver the Goods on the date specified in **clause 5.1**, without prejudice to any of the Customer's other rights or remedies (whether express or implied), the Customer may terminate the relevant Contract immediately by giving written notice to that effect to the Supplier, in which case:
 - 5.4.1 the Supplier will refund any monies already paid by the Customer under the Contract in relation to the Goods that have not been delivered; and
 - 5.4.2 the Customer will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the Customer as a result of the Supplier's failure to supply Goods, including in obtaining substitute goods from another supplier;
- 5.5 Subject to **clause 6**, risk in and ownership of the Goods will pass to the Customer on Delivery.

- 5.6 If a relevant Contract involves Supplier Personnel being present at any Site then the following terms shall apply:
- 5.6.1 before beginning any work at the Site the Supplier shall sign a certificate provided by the Customer certifying that the Supplier has been made aware of the Site regulations and that the Supplier will abide by them and will procure that (if applicable) the Supplier Personnel abide by the same;
 - 5.6.2 the Supplier shall ensure Supplier Personnel comply with all Applicable Law and the requirements of any relevant statutory and regulatory bodies; and
 - 5.6.3 the Supplier shall ensure Supplier Personnel comply with the Customer's reasonable requests and with any regulations that the Customer may notify to the Supplier or the Supplier Personnel in writing.
- 5.7 Except as expressly provided otherwise in a Contract, the Supplier will provide and be responsible at its own expense for delivery to and for unloading at any Site all plant, equipment and materials and other things required to provide any works or services which are required to deliver the Goods or for the Customer to receive the benefit of the Goods. All plant, equipment and materials brought to a Site by the Supplier shall be sited or deposited as directed by the Customer and shall remain at the Site at the Supplier's risk. The Supplier shall on completion of a Contract or at the Customer's request remove all such plant, equipment and materials and rubbish and leave all Sites in a clean and tidy condition.
- 5.8 The Supplier shall have access only to such parts of any Site as is reasonably necessary for the purpose of providing the Goods and shall ensure that Supplier Personnel do not enter any part of a Site other than those parts as the Customer may from time to time authorise.
- 5.9 The Customer shall be entitled to object to any Supplier Personnel employed by the Supplier in the provision of the Goods from attending any Site who, in the Customer's opinion, has misconducted himself or has been incompetent or negligent. The Supplier shall remove that person from the Site and he shall not be employed again by the Supplier in connection with the supply of the Goods without the Customer's permission. Any removal of Supplier Personnel under this clause shall not constitute a valid reason for the failure to provide the Goods in accordance with any Contract.
- 5.10 The Supplier shall ensure that the supply of the Goods shall create as little interference as possible with the Customer's operations or the Customer's use and enjoyment of any public rights or with any easement or property.
- 5.11 The Customer shall not be obliged to return to the Supplier any packaging used to deliver the Goods.

6. GOODS PURCHASED IN ADVANCE OF DELIVERY

- 6.1 In the event that the Customer agrees to pay to the Supplier the Price (whether in whole or part) for Goods in advance of Delivery then, and in respect only to those Goods for which the Customer has agreed to pay the Price (whether in whole or part) in advance of Delivery:
- 6.1.1 ownership of the relevant Goods will pass to the Customer upon payment of the Price (whether in whole or part);
 - 6.1.2 until Delivery has occurred the Supplier will:
 - 6.1.2.1 hold the relevant Goods on a fiduciary basis as the Customer's bailee;

- 6.1.2.2 store the Goods (at no cost to the Customer) separately from all other goods of the Supplier or any third party in such a way that they remain readily identifiable as the Customer's property;
 - 6.1.2.3 maintain the Goods in satisfactory condition; and
 - 6.1.2.4 keep the Goods insured for their full price against damage or loss on an "all risks" basis with insurers approved by the Customer (acting reasonably); and
- 6.1.3 the Supplier grants, and will procure that the owner of any relevant third party premises grants, the Customer, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the relevant Goods are or may be stored in order to inspect them or to recover them.
- 6.2 The Customer's rights contained in this **clause 6** will survive expiry or termination of this Agreement however arising.

7. **WARRANTY**

- 7.1 The Supplier shall promptly make good at the Supplier's own expense any defect in the Goods that the Customer discovers during the Warranty Period.
- 7.2 Any repairs or replacements made available under **clause 7.1** will themselves be covered by the above warranty for the Further Warranty Period.
- 7.3 The Supplier will ensure that spare parts are available to facilitate repairs (where applicable) for the Goods for a period of at least ten years from the date of Delivery.
- 7.4 The Supplier warrants and represents that:
 - 7.4.1 it has full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and any Contract;
 - 7.4.2 it shall discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures;
 - 7.4.3 it shall at all times comply with the Customer's policies and procedures as notified to the Supplier by the Customer, and as may be updated by the Customer from time to time, including the Customer's policies and procedures relating to regulatory compliance and data and information security; and
 - 7.4.4 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement or any Contract.

8. **DEFECTIVE GOODS**

- 8.1 The Supplier will ensure that the Goods will:
 - 8.1.1 be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect the Customer relies on the Supplier's skill and judgement;
 - 8.1.2 conform to the Specification;

- 8.1.3 be free from defects in design, materials and workmanship;
 - 8.1.4 comply with all relevant Applicable Law and the requirements of any relevant statutory and regulatory bodies; and
 - 8.1.5 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 8.2 Without prejudice to any of the Customer's other rights or remedies (whether express or implied), if any Goods do not conform with any of the terms of **clause 8.1** the Customer may (whether or not the Goods have been accepted):
- 8.2.1 terminate the relevant Contract immediately by giving written notice to that effect to the Supplier; or
 - 8.2.2 require the Supplier, at the Customer's option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods.

and, in either case, the Customer will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the Customer as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier.

- 8.3 **Clause 8.2** will apply to any repaired or replacement Goods supplied under **clause 8.2.2**.

9. CUSTOMER PROPERTY

- 9.1 All materials, equipment and tools supplied to the Supplier by the Customer will at all times:
 - 9.1.1 be and remain the Customer's exclusive property;
 - 9.1.2 be held by the Supplier in safe custody at the Supplier's own risk;
 - 9.1.3 be maintained and kept in good condition by the Supplier until returned to the Customer;
 - 9.1.4 not be disposed of other than in accordance with the Customer's written instructions;
 - 9.1.5 not be used otherwise than as authorised by the Customer in writing; and
 - 9.1.6 be returned to the Customer on demand.

10. DATA PROTECTION AND INFORMATION SECURITY

- 10.1 Each Party shall comply with EU General Data Protection Regulation 2016/679 ("GDPR") and the UK Data Protection Act 2018 (as applicable) ("the Data Protection Laws") In particular where a Party ("Processor") is processing personal data on behalf of the other Party ("Controller") it shall:
 - 10.1.1 process it only for the purposes of complying with its obligations under this Agreement, in accordance with the Controller's documented instructions from time to time and good industry practice;
 - 10.1.2 ensure that appropriate technical and organisational measures shall be taken to ensure a level of security of Controller personal data appropriate to the risk (including measures taken against unauthorised or unlawful processing of Controller personal data and the accidental loss or destruction of, or damage to, such data) and promptly provide to the Controller details of those measures from time to time on receipt of Controller's written notice;

- 10.1.3 not transfer, or otherwise directly or indirectly disclose, any Controller personal data to a third party or to a country or territory outside the European Economic Area without the prior written consent of the Controller which may be refused or granted subject to such conditions as Controller deems necessary; and
- 10.1.4 immediately and fully notify the Controller on receipt of any notices received by the Supplier relating to the processing of Controller personal data including (but not limited to) data subject requests, complaints and/or correspondence or if any Controller personal data has been disclosed in breach of this clause or if it is lost, becomes corrupted, is damaged or is deleted in error and provide the Controller with such information and assistance as the Controller may require in relation to such notice or breach (at no cost to the Controller). The Processor shall provide and implement technical and organisational measures to help the Controller fulfil its obligations in relation to such notices from or on behalf of data subjects in connection with the rights conferred on them by Data Protection Law. For the avoidance of doubt, in no event shall the Processor respond directly to any notice relating to any Controller personal data.
- 10.2 The Processor shall comply with the provisions set out in Article 28 of the GDPR (together with any provisions referenced therein) which shall have effect as obligations on the Processor as if set out in full in this clause and the expressions "controller" and "processor" used in those provisions and incorporated in this Agreement pursuant to this clause shall be deemed references to the Controller and the Processor respectively. References to "personal data", "processing", "data subject" shall have the meanings set out in the applicable Data Protection Law.

11. INDEMNITY

- 11.1 The Supplier will indemnify the Customer against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer does or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with the Goods being provided to the Customer otherwise than in accordance with the terms of any Contract or as a result of a breach by the Supplier of the terms of this Agreement or any Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations). This **clause 11.1** will not apply to any breach of, or failure or delay in performing, or negligent performance or non-performance of, any of the Supplier's obligations under **clause 14**.
- 11.2 Without prejudice to **clause 11.1**, if any person claims that the possession and/or use and/or sale of the Goods by the Customer and/or its customers, officers, employees, agents or sub-contractors infringes the Intellectual Property Rights of that or any other person ("**IPR Claim**"), the Supplier will indemnify, the Customer, its customers, officers, employees, agents and sub-contractors against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer, its customers, officers, employees, agents or sub-contractors by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with that IPR Claim.

12. INSURANCE

- 12.1 The Supplier will, at the Supplier's own cost, maintain the required Insurances as specified in 12.2 during the Term and the term of any Contract.

- 12.2 The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and any other insurances which the Supplier is required by Applicable Laws to maintain to cover the liabilities that may arise under or in connection with the Contract, and shall, on the University's request, produce evidence of the insurance policies and of the payment of the premiums.

13. PRICE AND PAYMENT

- 13.1 Subject to the Supplier performing its obligations in accordance with the terms of the relevant Contract, the Customer will pay the Prices to the Supplier in accordance with this **clause 13**.
- 13.2 The only monies to be paid by the Customer in connection with the supply of the Goods are the Prices which will be inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance and carriage and delivery costs.
- 13.3 Any sum payable under this Agreement and/or any Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid value added tax invoice.
- 13.4 The Supplier will invoice the Customer for the Prices for the Goods following Delivery unless otherwise agreed in writing by the Customer (such agreement may be withheld or delayed in the Customer's sole discretion) and as specified in the **[Purchase Order] OR [Request for Quotation Document]**.
- 13.5 Each invoice will be a valid VAT invoice and will contain the following information:
- 13.5.1 the Customer's Purchase Order number;
 - 13.5.2 A unique Invoice Number;
 - 13.5.3 The letterhead of the Supplier
- and will be sent to the Customer at the following email address (or such other address and/or individual as may be notified by the Customer to the Supplier from time to time):
- Purchase.Invoices@hud.ac.uk
- 13.6 Subject to **clauses 13.7, 13.8, 13.9, 13.10** and **13.12**, each invoice will be payable by the Customer within 30 days following the date on which the invoice is received by the Customer.
- 13.7 The Customer will not be liable to pay any sums in respect to any invoice that:
- 13.7.1 is not submitted strictly in accordance with **clause 13.5**; or
 - 13.7.2 is not received by the Customer within twelve months of the date of Delivery of the applicable Goods.
- 13.8 Notwithstanding any purported contrary appropriation by the Supplier, the Customer will be entitled, by giving written notice to the Supplier, to appropriate any payment by the Customer to any invoice issued by the Supplier.
- 13.9 No payment made by the Customer will constitute acceptance or approval by the Customer of the Goods or otherwise prejudice any rights or remedies which the Customer may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.

- 13.10 If the Customer, on bona fide grounds, disputes any part of an amount invoiced by the Supplier (a "**Disputed Sum**"), the Customer will, within 30 days of the date of receipt of the relevant invoice, notify the Supplier in writing of such dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced and:
- 13.10.1 the Customer will pay that part of the invoice which is not the Disputed Sum in accordance with **clause 13.5**;
 - 13.10.2 the Customer will be entitled to withhold payment of the Disputed Sum;
 - 13.10.3 the parties will negotiate in good faith to resolve the dispute, but if a resolution cannot be reached within 30 days of the Customer giving notice under this **clause 13.10**, **clause 26** will apply to the dispute;
 - 13.10.4 the Supplier will provide all such information and evidence as may be reasonably necessary to verify the Disputed Sum; and
 - 13.10.5 following resolution of the dispute the Customer will, within 30 days, pay to the Supplier that part of the Disputed Sum (if any) as it is resolved is payable by the Customer.

For the avoidance of doubt, if the Customer fails to notify any dispute about the amount of an invoice to the Supplier in accordance with this **clause 13.10**, this will not constitute a waiver of the Customer's right to dispute the amount of that invoice.

- 13.11 If any sum payable under this Agreement and/or any Contract is not paid on or before the due date for payment the Supplier will be entitled to charge the Customer interest on that sum at 2% per annum above the base lending rate from time to time of Lloyds Bank plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any Disputed Sum, provided that if it is agreed or determined that part or all of the Disputed Sum is payable, interest will be chargeable on the relevant part of the Disputed Sum in accordance with this **clause 13.11** but from the date on which payment of that sum is due in accordance with settlement of the dispute rather than from the date on which payment of the original invoice which included that sum was originally due. The parties agree that this **clause 13.11** is a substantial remedy for late payment of any sum payable under this Agreement and/or any Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.12 The Customer will be entitled to set-off any liability which the Supplier has to the Customer against any liability which the Customer has to the Supplier, whether such liability is present or future, liquidated or unliquidated, under this Agreement and/or any Contract or any other contract between the parties or other cause of action.

14. **ANTI-CORRUPTION**

- 14.1 The Supplier will, and will procure that Supplier Personnel will:
- 14.1.1 not commit any act or omission which causes or could cause the Customer or the Supplier to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
 - 14.1.2 comply with the Customer's anti-corruption policy as updated from time to time;
 - 14.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received in connection with this Agreement and any Contract and the steps taken to comply with this **clause 14.1**, and permit the Customer to inspect those records as reasonably required;

- 14.1.4 promptly notify the Customer of:
 - 14.1.4.1 any request or demand for any financial or other advantage received by the Supplier or Supplier Personnel; and
 - 14.1.4.2 any financial or other advantage the Supplier or Supplier Personnel give or intend to give,

whether directly or indirectly in connection with this Agreement and/or any Contract; and
- 14.1.5 promptly notify the Customer of any breach of this **clause 14.1**.

14.2 The Customer may terminate this Agreement and/or any Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of **clause 14.1**.

14.3 The Supplier warrants that it is compliant with all Applicable Law.

14.4 The Supplier will indemnify the Customer against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer does or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach of any of the Supplier's obligations under **clause 14.1**.

15. PREVENTION OF TAX EVASION

15.1 The Supplier will, and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement and any Contract will:

15.1.1 not do or omit to do any act or thing which constitutes or may constitute a UK tax evasion offence, a foreign tax evasion offence (as those terms are defined in the CFA) or a Facilitation of Tax Evasion Offence;

15.1.2 not do or omit to do any act or thing which causes or may cause the Customer to commit a CFA Offence;

15.1.3 without prejudice to **clause 15.1.2**, not do or omit to do any act or thing which would cause the Customer to commit a CFA Offence or may do so if the Customer was unable to prove that it had in place prevention procedures as referred to in section 45(2) or section 46(4) of the CFA; and

15.1.4 provide the Customer (at the Supplier's cost) with such assistance as it may require from time to time to enable it to perform any activity required by any relevant Authority in any relevant jurisdiction for the purpose of compliance with any proceeds of crime, anti-money laundering or prevention of tax evasion law (including the CFA) or to enable it to self-disclose any conduct to or to co-operate with any Authority.

15.2 The Supplier warrants to the Customer that it has not, and its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement and any Contract have not:

15.2.1 been convicted in any jurisdiction of any offence of cheating the public revenue, fraudulently evading any tax or facilitating the fraudulent evasion of any tax or been the subject of any agreement (including any deferred

prosecution agreement or similar arrangement) with any Authority concerning any such offence or alleged offence;

15.2.2 done or omitted to do any act or thing which caused or may cause any person to commit an offence under the CFA (or would or may do so if the relevant person was unable to prove that it had in place prevention procedures as referred to in section 45(2) or section 46(4) of the CFA);

15.2.3 been, and are not, the subject of any investigation, enquiry or enforcement proceedings by any Authority regarding any offence or alleged offence of cheating the public revenue, fraudulently evading any tax or facilitating the evasion of any tax in each case in any jurisdiction;

15.2.4 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including any exclusion under regulation 57 of the Public Contracts Regulations 2015 or regulation 80 of the Utilities Contracts Regulations 2016 by reason of it doing any act or thing which constitutes a UK tax evasion offence or a foreign tax evasion offence (as those terms are defined in the CFA) or a Facilitation of Tax Evasion Offence, or being under investigation in respect of any of the same.

15.3 The Supplier will immediately give written notice to the Customer upon the occurrence of a breach or suspected breach of any of its obligations under this **clause 15**.

15.4 The Customer may terminate this Agreement and/or any Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of any of its obligations under this **clause 15** or if the Customer has reasonable cause to believe that the Supplier has facilitated fraudulent evasion of any tax.

15.5 The Customer will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to remove from the performance of this Agreement and/or any Contract any of its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement and/or any Contract and in respect of whom the Supplier is in breach of any of its obligations under **clause 15.1** or any of its warranties under **clause 15.2**.

15.6 The Supplier will ensure that any person associated with the Supplier (as determined in accordance with section 44 Criminal Finances Act 2017) who is performing services in connection with this Agreement and/or any Contract and any sub-contractor does so only on the basis of a written contract which imposes on and secures from such person and any such sub-contractor terms equivalent to those imposed on the Supplier by this **clause 15**. The Supplier will be responsible for the observance and performance by such persons and sub-contractors of those terms and will be directly liable to the Customer from any breach by such persons and sub-contractors of any of such terms.

16. MODERN SLAVERY

16.1 The Supplier will:

16.1.1 not engage in any Modern Slavery Practice;

16.1.2 conduct proper and adequate checks on any agency or person used to provide Goods to ensure that any such agency or person does not engage in any Modern Slavery Practice;

16.1.3 provide the Customer with such assistance and information as the Customer may require from time to time to enable the Customer to comply with Anti-Slavery Laws; and

16.1.4 permit the Customer, and any person nominated by the Customer to have such access on demand to the Supplier's premises, personnel, systems, books and records as the Customer may require to verify the Supplier's compliance with this **clause 16.1**.

16.2 The Supplier will immediately give written notice to the Customer upon a breach, or suspected breach, of any of the Supplier's obligations referred to in **clause 16.1** occurring.

16.3 The Customer may terminate this Agreement and/or any Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of obligations under **clause 16.1**.

16.4 The Customer will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to:

16.4.1 remove from the performance of this Agreement and/or any Contract any of the Supplier Personnel whom the Customer believes to be engaging in any Modern Slavery Practice; or

16.4.2 take such action as the Customer requires to ensure that the Supplier fully complies with any Anti-Slavery Law.

17. **RACE RELATIONS**

17.1 The Supplier will not unlawfully discriminate within the meaning and scope of any law or regulation relating to discrimination (whether in race, gender, religion, disability, age, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to secure the observance of this provision by the Supplier's Personnel.

18. **TERMINATION OF CONTRACT**

18.1 If the Supplier commits:

18.1.1 a material breach of a Contract; or

18.1.2 more than 2 breaches of a Contract in any rolling period of six months, whether such breaches are of the same, similar or different provisions of the Contract,

whether or not such breaches have been remedied and/or can be remedied, the Customer may terminate that Contract immediately by giving written notice to that effect to the Supplier.

18.2 The Customer may terminate any Contract immediately by giving written notice to that effect to the Supplier if the Supplier becomes Insolvent and the Supplier will notify the Customer in writing immediately upon the occurrence of such event or circumstance.

18.3 Following expiry or termination of a Contract:

18.3.1 any terms which expressly or impliedly continue to have effect after expiry or termination of that Contract will continue in force; and

18.3.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

19. TERMINATION OF THIS AGREEMENT

- 19.1 The Customer may terminate this Agreement by giving not less than 30 days' written notice to that effect to the Supplier, such notice to expire at any time.
- 19.2 If the Supplier commits:
- 19.2.1 a material breach of this Agreement; or
 - 19.2.2 more than 2 breaches of this Agreement in any rolling period of six months, whether such breaches are of the same, similar or different provisions of this Agreement,
- whether or not such breaches have been remedied and/or can be remedied, the Customer may terminate this Agreement immediately by giving written notice to that effect to the Supplier.
- 19.3 The Customer may terminate this Agreement immediately by giving written notice to that effect to the Supplier if the Supplier becomes Insolvent and the Supplier will notify the Customer in writing immediately upon the occurrence of such event or circumstance.
- 19.4 Following the Termination Date:
- 19.4.1 any terms which expressly or impliedly continue to have effect after expiry or termination of this Agreement will continue in force; and
 - 19.4.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.
- 19.5 Within 30 days after the Termination Date each party will, subject to the exception set out in **clause 19.6**:
- 19.5.1 if requested to do so, return to the other party all of the other party's Confidential Information (including all copies and extracts); and
 - 19.5.2 cease to use the other party's Confidential Information.
- 19.6 Each party may retain any of the other party's Confidential Information which it has to keep to comply with any Applicable Law. The provisions of **clause 20** will continue to apply to retained Confidential Information.

20. CONFIDENTIALITY

- 20.1 Each party will, subject to **clause 20.2**:
- 20.1.1 only use the other party's Confidential Information for the purpose of performing its obligations and exercising its rights under this Agreement and/or any Contract;
 - 20.1.2 keep the other party's Confidential Information secret, safe and secure; and
 - 20.1.3 not disclose the other party's Confidential Information to any other person.
- 20.2 Each party may disclose the other party's Confidential Information:
- 20.2.1 to the extent required by law or any court of competent jurisdiction or the rules of any governmental or regulatory body; and

20.2.2 to those of its officers, directors, employees and professional advisers and, in the Customer's case, its agents and sub-contractors, who need access to that Confidential Information so that it can perform its obligations and exercise its rights under this Agreement and/or any Contract. A party disclosing the other party's Confidential Information under this **clause 20.2.2** will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **clause 20**.

20.3 For the purposes of this **clause 20**, "**Confidential Information**" means the terms of this Agreement and/or any Contract and any information that relates to a party (or any of its or businesses) and which is disclosed to the other party in connection with this Agreement and/or any Contract, but excluding information that:

20.3.1 is at the relevant time in the public domain (other than by virtue of a breach of this **clause 20**);

20.3.2 was received by the other party from a third party who did not acquire it in confidence; or

20.3.3 is developed by the other party without any breach of this Agreement and/or any Contract.

21. **FREEDOM OF INFORMATION**

21.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

21.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

21.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;

21.1.3 provide the Customer with a copy of all Information held on behalf of the Customer requested in the Request For Information which is in its possession or control in the form that the Customer requires within 5 Business Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

21.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Customer.

21.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement and/or any Contract) the Customer shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

22. **AUDIT**

22.1 The Supplier shall keep secure and maintain until two years after the final payment of all sums due under each Contract, or such longer period as may be agreed between the parties, full and accurate records of the Goods and expenditure reimbursed by the Customer and all payments made by the Customer.

- 22.2 The Supplier shall provide the Customer or the Customer's authorised agents, such access to those records as may be reasonably required in order to assess the Supplier's compliance with any Contract.

23. NOTICE

- 23.1 Subject to **clause 23.4**, any notice or other communication given under or in connection with this Agreement or any Contract will be in writing and:

23.1.1 sent to the relevant party's address by pre-paid first class post; or

23.1.2 delivered to or left at the relevant party's address (but not, in either case, by the method set out in **clause 23.1.1**).

and, in the case of any notice or other communication to be given to the Customer, marked for the attention of the Customer's specified representative.

- 23.2 Any notice or communication given in accordance with **clause 23.1** will be deemed to have been served:

23.2.1 if given by first class post as set out in **clause 23.1.1**, at 9.00am on the third day after the date of posting; and

23.2.2 if given as set out in **clause 23.1.2**, at the time the notice or communication is delivered to or left at that party's address.

provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

- 23.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 23.1** were complied with.

- 23.4 This **clause 22** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

24. ASSIGNMENT AND SUB-CONTRACTING

- 24.1 The Supplier will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this Agreement or any Contract without the Customer's prior written consent (such consent may be withheld or delayed in the Customer's sole discretion).

- 24.2 The Customer will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this Agreement and/or any Contract.

- 24.3 The Supplier will not be entitled to sub-contract any of its obligations under this Agreement or any Contract without the prior written consent of the Customer (such consent may be withheld or delayed in the Customer's sole discretion. Any sub-contracting will not relieve the Supplier from its liabilities to the Customer under this Agreement or any Contract and the Supplier will be liable to the Customer for the acts and omissions of its sub-contractors in relation to this Agreement or any Contract.

- 24.4 The Customer will be entitled to sub-contract any of its obligations under this Agreement and/or any Contract.

25. **GENERAL**

- 25.1 This Agreement and all Contracts constitute the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 25.1.1 neither party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in this Agreement;
 - 25.1.2 neither party has entered into any Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in that Contract; and
 - 25.1.3 nothing in this **clause 25.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 25.2 Nothing in **clause 25.1** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.
- 25.3 A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement or any Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 25.4 If any term of this Agreement or any Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement or the relevant Contract and this will not affect the remainder of this Agreement or the relevant Contract which will continue in full force and effect.
- 25.5 Save as otherwise expressly provided in this Agreement, no variation to this Agreement or any Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
- 25.6 Nothing in this Agreement or any Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 25.7 Each party agrees that it is an independent contractor and is entering into this Agreement and all Contracts as principal and not as agent for or for the benefit of any other person.
- 25.8 The parties do not intend that any term of this Agreement or any Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 25.9 The Customer's rights and remedies set out in this Agreement and Contracts are in addition to and not exclusive of any rights and remedies provided by law.

26. **GOVERNING LAW AND JURISDICTION**

- 26.1 This Agreement and any and all Contracts and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 26.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement and any Contract (including in relation to any non-contractual obligations).