

LIVERPOOL JOHN MOORES UNIVERSITY

1 - TERMS & CONDITIONS – DEFINITIONS – (Version 2017 – new clauses from 32 - 34)

“We”, “Us” and “Our” means Liverpool John Moores University (“LJMU”)

“You” and “Your” means the person, firm or company to whom the Purchase Order is addressed

“Goods” means the materials, articles, works and services described in the Contract.

“Packaging” means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and any other containers.

“Authorised Officer”, means Our employee authorised by Us to sign Our Purchase Order

“Purchase Order”, means Our Authorised Purchase Order having these Terms and Conditions of Purchase on its reverse

“Order Amendment” means Our Authorised Order Amendment or series of Order Amendments..

“Contract” has the meaning given in Condition 2 below. (The Contract)

“Price” has the meaning given in Condition 3 below. (Price)

“Sales of Goods Act 1979” shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.

“Supply of Goods and Services Act 1982” shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

2 - THE CONTRACT

You agreed to sell, and We agree to purchase the Goods in accordance with the Contract. The Contract shall comprise (in order or precedence): any Order Amendments, the Purchase Order, these General Conditions of Purchase, any other document (or part document) referred to on the Purchase Order. Delivery of Goods in response to a Purchase Order or Order Amendment, shall be taken to imply that You have accepted the terms and condition of this Contract.

3 – PRICE

You will sell Us the Goods for the firm and fixed Price stated in the Contract. If no Price is stated in the Contract, then the Price shall be a fair price. The Price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

4 – VARIATIONS

We shall have the right, before delivery, to send You an Order Amendment adding to, deleting or modifying the Goods. If the Order Amendment will cause a change to the Price or delivery date, then You must suspend performance of the Contract and notify Us without delay, calculating the new Price and delivery date at the same level of cost and profitability as the original price. You must allow Us at least 10 working days to consider any new Price and delivery date.

5 - OUR RIGHT OF CANCELLATION

In addition to Our other rights of cancellation under this Contract, We may cancel the Purchase Order and any Order Amendment thereto, at any time, by sending You a notice of termination. You will comply with any instruction that We may issue with regard to the Goods. The total of all payments made, or due to You under this Contract, including any termination payment, shall not exceed the Price. If You fail to submit a termination claim within 3 months of the date of Our notice of termination, then We shall have no further liability under the Contract.

6 - QUALITY AND DESCRIPTION

The Goods shall conform in every respect with the provision of the Contract;

- be capable of all standards of performance specified in the Contract;

- be fit for any purpose made known to You expressly, or by implication, and in this respect We rely on Your skill and judgement;
- be new (unless otherwise specified on the Purchase Order) and be of sound materials and skilled and careful workmanship;
- correspond with their description or any samples, patterns, drawing, plans and specifications referred to in the Contract;
- comply with any current legislation

7 - WORK ON OUR PREMISES

You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You, will adhere in every respect to the obligations imposed on You by current safety legislation, and You, will comply with any LJMU regulations that We may notify to You in writing.

8 - PROGRESS AND INSPECTION

You shall at Your expense, provide any programmes of manufacture and delivery that We may reasonably require. You shall notify Us without delay, in writing, if Your Progress falls behind or may fall behind any of these programmes. We shall have the right to check progress at Your works, or the works of sub-contractors at all reasonable times, to inspect and to reject Goods that do not comply with the contract. Any inspections, or approval shall not relieve You from Your obligation under this Contract.

9 – PACKAGING

Unless otherwise stated in the contract, all Packaging shall be non-returnable. If the Contract states that Packaging is returnable, it must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of Packaging. We shall not be liable for any Packaging lost or damaged in transit.

10 – SAFETY

You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods and the provision of data sheets for hazardous materials.

11 – DELIVERY

The Goods shall be properly packed, secured and despatched at Your expense to arrive in good condition at the time or times and the place or places specified in the Contract. If You or Your carrier deliver any Goods at the wrong time or to the wrong place, then we may deduct from the Price any resulting costs of storage or transport.

12 - LATE DELIVERY

If the Goods, or any part of them, are not delivered by the time or times specified in the Contract, then We may, by written notice, cancel any undelivered balance of the Goods. We may also return for full credit, and at your expense, any Goods that, in Our opinion, cannot be utilised owing to the cancellation. In the case of services, we may have the work performed by alternative means and any additional costs reasonably so incurred, shall be at Your expense. This shall not affect any other rights that We have.

13 - PROPERTY AND RISK

You shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly. Ownership of the goods shall pass to Us:

- when the Goods have been delivered but without prejudice to Our right of rejection under this Contract, and;
- if We make any advance or stage payment, at the time such payment is made, in which case You must as soon as possible mark the Goods as Our property.

14 – ACCEPTANCE

We shall have the right to reject the Goods in whole or in part, whether or not paid for in full or in part, within a reasonable time of delivery if they do not conform with the requirements of this Contract. We shall give You a reasonable opportunity to replace the Goods with new Goods that conform with this contract, after which time We shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods elsewhere. In the event of cancellation under this condition, You

shall promptly repay any monies paid under the Contract. Cancellation of the Purchase Order under this condition, shall not affect any other rights We may have. You must collect all rejected Goods within a reasonable time of rejection or We shall return them to You at Your risk and expense.

15 – PAYMENT

Unless stated otherwise in the Contract, We shall pay You 30 days from the invoice date, provided we are in receipt of a correctly rendered invoice. Your invoice must be addressed to the department indicated on the Purchase Order quoting the full Purchase Order number. We shall not be held responsible for delays in payment caused by Your failure to comply with Our invoicing instructions.

16 - YOUR WARRANTY

You shall promptly make good at Your expense any defect in the Goods that We discover under proper usage during the first of 12 months of actual use or from the date of acceptance by Us whichever period shall expire first. Such defects may arise from Your faulty design, Your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law. Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by Us.

You will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 10 years from the date of delivery of the goods.

17 - INDEMNITY AND INSURANCE

You shall indemnify Us against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute in respect of personal injury to, or death of, any person or in respect of any loss or destruction of, or damage to, property (other than as a result of any default or neglect of Ourselves or of any person for whom We are responsible) which shall have occurred in connection with any work executed by You under this Contract or shall be alleged to be attributable to some defect in the Goods.

You will indemnify Us against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute (other than as a result of any default or neglect of Ourselves or of any person for whom We are responsible) in respect of personal injury to, or death of any of Your or Our employees, agents, sub-contractors or other representatives while on Our premises whether or not such persons are (at the time such personal injury or death are caused) in the course of their employment.

You will indemnify Us against any and all loss, costs, expenses and liabilities caused to Us whether directly or as a result of action, claim, or demand of any third party, by reason of any breach by You of these conditions or of any terms or obligations on Your part implied by the Sale of Goods Act 1979, by the Supply of Goods and Services Act 1982 or by any other statute or statutory provisions relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of Our rights under Condition 14.

You shall hold satisfactory insurance cover to fulfil Your insurance obligations for the duration of this Contract, including public liability insurance cover of at least £2m (two million pounds sterling). You shall effect insurance against all those risks arising from Your indemnity in condition 17. Satisfactory evidence of such insurance and payment of current premiums shall be shown to Us upon request.

18 - RECOVERY OF SUMS DUE

Whenever under the Contract any sums of money shall be recoverable from, or payable by You, they may be deducted from any sums then due, or which at any later time may become due to You under this Contract or under any other contract You may have with Us.

19 - MATTERS BEYOND CONTROL

If either party is delayed or prevented from performing its obligations under this Contract by circumstances beyond the reasonable control of either party, (including without limitation, any form of Government intervention, strikes and lock-outs relevant to the Purchase Order or breakdown of plant) such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in the Purchase Order, then the Contract may be cancelled by either party. We shall pay to You such sums as may be fair and reasonable in all the circumstances of the case in respect of the work performed by You under the Purchase Order prior to cancellation, but only in respect of work that We have received full benefit as originally contemplated in the Contract. This provision can only have effect if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

20 - ARTICLES ON LOAN AND USE OF INFORMATION

All tools, materials, drawing, specifications and other equipment and data (“the Articles”) loaned by Us to You in connection with the Contract, shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of any of the articles will be made without the consent in writing of Our Authorised Officer. Until You return all the articles to Us, they shall be at Your risk and insured by You at Your own expense against the risk of loss, theft or damage. Any loss of, or damage to, such articles shall have been made good by You at Your expense.

Any information derived from Our property or otherwise communicated to You in connection with the Contract, shall be kept secure and confidential and shall not without the consent in writing of Our Authorised Officer, be published or disclosed to any third party or made use of by You except for the purpose of implementing the contract.

21 - OWNERSHIP OF RESULTS

If the Contract involves design and/or development work:

All rights in the result of work arising out of, or deriving from this Contract, including inventions, designs, copyright and knowledge shall be Our property, and We shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.

You shall promptly communicate to Us all such results and shall if requested, and at Our expense, do all acts and things necessary to enable Us or Our nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to Us or Our nominees.

You shall ensure that all technical information (including computer programs and programming information) arising out of, or deriving from this Contract, is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.

22 - INFRINGEMENT OF PATENTS

With the exception of Goods made to Our designs or instruction, You warrant that neither the Goods nor Our use of them will infringe any patent registered, design trade mark, copyright or other protected right and undertake to indemnify Us against all action claims, demands, costs, charges and expenses arising from, or incurred by reason of any infringement, or alleged infringement of any such right.

23 - NON OBSERVANCE OF CONDITIONS

If You breach or fail to observe any provision of this Contract, We may give You written notice of such breach or non-observance, and You shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should you fail to rectify the breach or non-observance, then We shall have the right to give You written notice terminating the Contract with immediate effect.

24 - YOUR INSOLVENCY

If You become insolvent or bankrupt or (being a company) make an arrangement with Your creditors or, have an administrative receiver or administrator appointed or commence to be wound up , We may without replacing or reducing any other of Our rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

25 - ASSIGNMENT AND SUB-LETTING

The Contract shall not be assigned by You, nor sub-let as a whole. You shall not sub-let any part of the Contract without Our written consent, but We shall not refuse such consent unreasonably. You shall be responsible for all work done and Goods supplied by all subcontractors.

26 - CORRUPT GIFTS

In connection with this or any other Contract between You and Us, You shall not give, provide, or offer to Our staff and agents, any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Condition, We shall, without prejudice to any other rights We may possess, be at liberty forthwith to terminate this and any other Contract, and to recover from You, any loss or damage resulting from such termination.

27 - ANTI-BRIBERY AND ANTI-CORRUPTION

You will 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').

You will 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.

You will have and shall maintain in place throughout the term of this agreement Your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and You will enforce them where appropriate.

You will immediately notify Us if a foreign public official becomes an officer or employee of You or acquires a direct or indirect interest in You (and You warrant that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement).

You will ensure that all persons associated with You or other persons who are performing services in connection with this agreement comply with this Clause.

For the purpose of this Clause, the meaning of adequate procedures and foreign public official and whether person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause a person associated with You includes but is not limited to any subcontractor of yours.

In the event of any breach of this Clause by You or by anyone employed by it or acting on your behalf (whether with or without the knowledge of You)

- You will immediately give Us full details of any such breach and shall co-operate fully with Us in disclosing information and documents which We may request
- We shall (without prejudice to any of its rights or remedies under this agreement or otherwise) be entitled by notice in writing to terminate this agreement immediately
- You shall be liable for and shall indemnify and keep Us indemnified in respect of any and all loss resulting from such termination.

In any dispute, difference or question arising in respect of the interpretation of this Clause; or the right of Us to terminate this agreement; or the amount or value of any gift, consideration or commission

- the decision of Us shall be final and conclusive.

28 – WAIVER

A failure at any time to enforce any provision of the Contract shall, in no way affect the right at a later date to require complete performance of the Contract. Nor shall the waiver of the breach of any provision be taken, or held to be, a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

29 – NOTICE

All notices and communication required to be sent by You or Us in this Contract, shall be made in writing and sent by first class mail and if sent to You, sent to Your registered or head office, and if sent to Us, sent to the person authorising the Contract, at the address on the Contract, and shall be deemed to have reached the party to whom it is addressed, on the next business day following the date of posting.

30 – AMENDMENT

No addition, alteration or substitution of these conditions will bind Us, or form part of the Contract, unless and until accepted in writing by Our Authorised Officer.

31. MODERN SLAVERY ACT 2015 – ANTI-MODERN SLAVERY AND HUMAN TRAFFICKING

The Contractor recognises the University's legal and moral commitment to ensuring the University, through its staff, associates, agents, service providers and suppliers, conducts its business in accordance with the highest standards of

ethical behaviors, transparency and probity. The Contractor shall, upon the request of the University, provide evidence to the University of the steps the Contractor is taking to ensure that slavery and human trafficking is not taking place in any part of the Contractor's own business or supply chain in accordance with the provisions of the Modern Slavery Act 2015.

The Contractor, including any of its supply chain must notify the University in the event there has been a conviction for any offence or is / has been the subject of investigation involving slavery or human trafficking. Both the University and the Contractor agree that, in satisfying the requirements of this clause 20, the University shall not accept a statement that the Contractor has taken no such steps as evidence that the Contractor has complied with the obligations of the Modern Slavery Act 2015

32. FREEDOM OF INFORMATION

- 32.1 The Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR"), and public sector transparency policies, including the placing of contract award notices on the Contracts Finder database, apply to the University (together the "**Disclosure Obligations**").
- 32.2 You should be aware of the University's obligations and responsibilities under the Disclosure Obligations to disclose information held by the University. Information provided by you in connection with this procurement process, or with any contract that may be awarded as a result of this exercise, may therefore have to be disclosed by the University under the Disclosure Obligations, unless the University decides that one of the statutory exemptions under the FOIA or the EIR applies.
- 32.3 Tenders are also submitted on the condition that the appointed supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with the University's instructions and will not use such personal data for any other purpose. The contracted supplier will undertake to process any personal data on the University's behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.
- 32.4 Information on Freedom of Information at the University can be found at:

Detailed information on the Freedom of Information Act and the exemptions under the legislation are available from the Information Commissioner: <https://ico.org.uk/>

33. CONFIDENTIALITY UNDER THE FOIA

- 33.1 The Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR"), and public sector transparency policies, including the placing of contract award notices on the Contracts Finder database, apply to the University (together the "**Disclosure Obligations**").
- 33.2 You should be aware of the University's obligations and responsibilities under the Disclosure Obligations to disclose information held by the University. Information provided by you in connection with this procurement process, or with any contract that may be awarded as a result of this exercise, may therefore have to be disclosed by the University under the Disclosure Obligations, unless the University decides that one of the statutory exemptions under the FOIA or the EIR applies.
- 33.3 Tenders are also submitted on the condition that the appointed supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with the University's instructions and will not use such personal data for any other purpose. The contracted supplier will undertake to process any personal data on the University's behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.

34. TAX LIABILITY

LJMU and its subsidiaries, conducts their activities with integrity, transparency and fairness. LJMU are committed to the prevention of the facilitation of tax evasion as they recognise the importance of fostering a positive culture of tax compliance and maintaining the confidence of students, staff, partner organisations, other customers and the tax authorities.

LJMU and its subsidiaries do not and will not work with others who do not share their commitment to preventing the facilitation of tax evasion.

35. LAW

This Contract shall be subject to English Law and the jurisdiction of the English Courts