

STANDARD TERMS AND CONDITIONS OF PURCHASE



Document Title:	Standard Terms and Conditions of Purchase
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Approving Body:	Approved as part of Procurement Policy and Procedures – Audit Committee
Date of Approval:	02 November 2009
Date Effective From:	January 2010
Review Date:	January 2013
Indicate whether the document is for public access or internal access only Indicate whether the document applies to collaborative provision? <i>(Strikethrough text, as appropriate)</i>	Public Access Internal Access Only Applies to Collaborative Provision
Summary: Standard Terms and Conditions of purchase, approved as part of the Procurement Policy and Procedures.	

STANDARD TERMS AND CONDITIONS OF PURCHASE

1 INTERPRETATION

1.1 In these Conditions the following terms shall have the following meanings:

“**Buyer**” or the ‘**University**’ means The University of Winchester of Winchester SO22 4NR
“**Conditions**” means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller as set out in the Order or which are intended to be incorporated into the Order;

“**Order**” means the Buyer’s purchase order

“**Services**” means the services (if any) described in the Order;

“**Goods**” means the goods (if any, including any instalment of the goods or any part of them) described in the Order;

“**Contract**” means the Order which forms the contract for the sale and purchase of the Goods and the supply and acquisition of the Services on these Conditions;

“**Delivery Address**” means the address stated on the Order;

“**Price**” means the price of the Goods and/or the charge for the Services;

“**Seller**” means the person so described in the Order;

“**Specification**” includes any plans, drawings, data or other information relating to the Goods or Services;

“**Writing**” includes email, cable, facsimile transmission and compatible means of communication.

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection in any part of the world.

“**Deliverables**” means all documents, products and materials developed by the Seller in relation to the Services in any form, including the deliverables specified in the Order.

“**In-put Material**” means all documents, information and materials provided by the Buyer relating to the Services including (without limitation), the in-put materials specified in the Order.

1.2 Any reference in these Conditions to a statute or a provision of statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 A reference to one gender includes a reference to the other gender.

2 BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to the Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.2 These Conditions shall apply to and be incorporated into the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 The Buyer reserves the right to cancel the Order unless unconditionally accepted by the Seller in Writing within 28 days of its date.

2.5 No variation to the Order or these Conditions shall be binding unless agreed in Writing and signed by an authorised representative of the University.

3 COMMENCEMENT AND DURATION

3.1 The Services supplied under the Contract shall be provided by the Seller to the Buyer from the date specified in the Order, or if none is specified, the date of acceptance by the Buyer of the Seller's offer in accordance with condition 2.

3.2 The Services supplied under the Contract shall continue to be supplied for the period specified in the Order and, after that, shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than [one] months' notice.

4 SELLER'S RESPONSIBILITIES

4.1 The Seller shall

4.1.1 provide the Services, and deliver the Deliverables to the Buyer, in accordance with the Contract and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

4.1.2 observe and ensure that all employees, consultants and agents which it engages in relation to the Services observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises. The Buyer reserves the right to refuse such persons access to the Buyer's premises, which shall only be given to the extent necessary for the performance of the Services;

4.1.3 notify the Buyer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and

4.1.4 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licenses and consents in relation to provision of the Services.

5. SPECIFICATIONS

5.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specifications supplied by the Buyer to the Seller or agreed in Writing by the Buyer and the Seller.

5.2 Any Specification supplied by the Buyer to the Seller or specifically by the Seller for the Buyer, in connection with the Contract together with the copyright, design rights or any other Intellectual Property Rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to

the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

5.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

5.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

5.5 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of the inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

5.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

6 PRICE OF GOODS AND SERVICES

6.1 The Price of Goods and the Services shall be as stated in the Order and, unless otherwise so stated shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies.

6.2 No increase in the Price may be made (whether on account of or of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

6.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

7 TERMS OF PAYMENT

7.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be and each invoice shall quote the number of the Order.

7.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 31 days after that end of the month of receipt by the Buyer of a valid invoice or after acceptance of the Goods or Services in question by the Buyer whichever is the later.

7.3 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

8 DELIVERY

8.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order (or if no such date is specified then delivery shall take place within 28 days of the Order), in each case during the Buyer's usual business hours.

8.2 Where the date of delivery of the Goods or performance of the Services is to be specified after placing of Order, the Seller shall give the Buyer reasonable notice of the specified date.

8.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

8.4 The Seller shall ensure that any delivery of Goods is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. The delivery note must be displayed prominently.

8.5 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:

8.5.1 cancel the Contract in whole or in part;

8.5.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

8.5.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining similar goods to the Goods in substitution from another supplier; and

8.5.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

8.6 If the Goods are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single contract and not severable. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

8.7 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

8.8 The Seller shall supply the Buyer in reasonable time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.

8.9 The Buyer shall not be obliged to return to the Seller any packing or packing materials for the goods, whether or not any Goods are accepted by the Buyer.

8.10 The Seller shall off-load and stack the Goods at its own risk as directed by the Buyer.

8.11 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

9 RISK AND PROPERTY

9.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer is complete (including off-loading and stacking) and in accordance with the Contract.

9.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

10. WARRANTIES AND LIABILITY

10.1 The Seller warrants to the Buyer that the Goods:

- 10.1.1 will be of satisfactory quality and fit for the purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
- 10.1.2 will be free from defects in design, material and workmanship;
- 10.1.3 will be without fault and conform in all respects with the Order and/or correspond with any relevant Specification or sample supplied or advised by the Buyer to the Seller; and
- 10.1.4 will comply with all statutory requirements and regulations relating to the Sale of the Goods Act 1979 and/or Supply of Goods and Services Act 1982 and any other statute.

10.2 At any time prior to delivery of the Goods to the Buyer the Buyer shall have the right to inspect and test the Goods.

10.3 The Seller warrants to the Buyer that:

- 10.3.1 the Seller will perform the Services by appropriately qualified, experienced and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances and in accordance with generally recognised commercial practices and standards in the industry for similar services;
- 10.3.2 the Services and Deliverables will conform with all descriptions and specifications provided to the Buyer by the Seller; and
- 10.3.3 the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Seller will inform the Buyer as soon as it becomes aware of any changes in that legislation.

10.4 The Buyer's rights under these Conditions are in addition to the statutory terms implied in favour of the Buyer by the Sale of Goods Act 1979 and/or Supply of Goods and Services Act 1982 and any other statute.

10.5 Without prejudice to any other remedy, if the Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

- 10.5.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
- 10.5.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

10.6 The provisions of this condition 10 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial goods or services provided by the Seller

11 INDEMNITY & INSURANCE

11.1 If so specified in the Order, during the term of the Contract and for a reasonable period (being not less than 6 years thereafter), the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £[10,000,000] and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

11.2 The Seller shall indemnify and hold the Buyer harmless from all liability, loss, damage costs, claims and all direct, indirect or consequential liabilities (including loss of

profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- 11.2.1 breach of any warranty given by the Seller in relation to the Goods or Services;
- 11.2.2 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables);
- 11.2.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 11.2.4 act or omission of the Seller or its employees, agents or subcontractors in supplying, delivering and installing the Goods; and
- 11.2.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 11.2.6 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the supply of the Goods and/or Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Seller.

11.3 In respect of any injury, damage or loss caused to third parties or their property by the Goods there shall be no automatic right of indemnity due from the Buyer to the Seller.

12 TERMINATION

12.1 The Buyer shall be entitled to cancel the Order in respect of all or part of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance in which event the Buyer's sole liability shall be to pay the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

- 12.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 12.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller,
- 12.2.3 the Seller ceases, or threatens to cease to carry on business; or
- 12.2.4 the Buyer reasonably apprehends that any of the above events is about to occur in relation to the Seller and notifies the Seller accordingly; or
- 12.2.5 the Seller commits a material breach of any of the terms and conditions of the Contract.

12.3 The Buyer shall be entitled to refuse to accept any further deliveries of the Goods, or performance of the Services, but without any liability to the Buyer;

12.4 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

13 REMEDIES

13.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods and/or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

- 13.1.1 to rescind the Order;
- 13.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- 13.1.3 at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or to provide the Services again, and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 13.1.4 to refuse to accept any further deliveries of the Goods or supply of Services but without any liability to the Seller;
- 13.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

14 CONFIDENTIALITY

14.1 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees are subject to like obligations of confidentiality as bind the Seller.

14.2 All In-put Materials, and all other materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Seller shall, at all times, be and remain as between the Buyer and the Seller the exclusive property of the Buyer, but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer. They shall not be disposed of or used other than in accordance with the Buyer's written instructions or authorisation.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 The Seller assigns to the Buyer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

15.2 The Seller shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Buyer in accordance with condition 15.1.

16 GENERAL

16.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

16.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

16.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision shall not be affected thereby.

16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17 HEALTH AND SAFETY

17.1 The Seller shall comply with the requirements of UK and international legislation and agreements relating to the supply, packaging, labelling and carriage of hazardous goods.

17.2 The Seller shall ensure the Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

18 LAW

18.1 The construction, validity and performance of the Contract shall be governed by the Law of England. The Contract shall be deemed to have been made in England and the parties to the Contract hereby submit to the exclusive jurisdiction of the English Courts

19 EQUALITY AND DIVERSITY REQUIREMENTS

19.1 The Seller agrees to comply with the Buyer's policies and procedures to prevent unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief.

19.2 In accordance with its responsibilities under the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003) to eliminate unlawful racial discrimination, promote equal opportunities and promote good relations between people of different racial groups, the Buyer requires its contractors and sub-contractors to comply with the terms of this section.

19.3 The Seller warrants that its own practices and procedures comply with legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination.

19.4 The Seller will provide such information as required by the Buyer in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the Buyer or a body empowered to carry out such investigations under the relevant legislation.

19.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Seller, its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Seller shall indemnify the Buyer with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Buyer during or in connection with any such investigation or proceedings and further indemnify the Buyer for any compensation, damages, costs or other award the Buyer may be ordered or required to pay to a third party.

19.6 Without prejudice to its remedies set out above, the Buyer may terminate the contract if notice has been given to the Seller of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Seller has failed to remedy the breach within the stated period.

20 ENVIRONMENTAL REQUIREMENTS

20.1 The Seller agrees to comply with the Buyer's policies and procedures on environmental sustainability.

20.2 The Seller warrants that its own practices and procedures comply with all relevant environmental legislation.

20.3 The Seller will provide such information as required by the Buyer in relation to its compliance with environmental legislation and will co-operate with any investigation by the Buyer or a body empowered to carry out such investigations under the relevant legislation.

20.4 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the [contractor], its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Seller shall indemnify the Buyer with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Buyer during or in connection with any such investigation or proceedings and further indemnify the Buyer for any compensation, damages, costs or other award the Buyer may be ordered or required to pay to a third party.

20.5 Without prejudice to its remedies set out above, the Buyer may terminate the contract if notice has been given to the Seller of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the [contractor] has failed to remedy the breach within the stated period.

20.6 The Seller warrants that the goods supplied comply with all relevant environmental legislation

20.7 The Seller warrants that the goods supplied:

- 20.7.1 do not cause significant damage to the environment
- 20.7.2 do not consume a disproportionate amount of energy
- 20.7.3 minimises waste, including no unnecessary packaging
- 20.7.4 avoid the use of materials derived from threatened species or environments
- 20.7.5 do not involve the unnecessary use of or cruelty to animals
- 20.7.6 are where possible durable, recyclable, repairable, refillable or reusable as appropriate
- 20.7.7 do not emit toxic or polluting substances during their production, use or disposal

21. FORCE MAJEURE

21.1 Neither party shall be liable to the other for any default hereunder where such default is directly or indirectly caused by or arises out of any event beyond its reasonable control. It is hereby agreed between the parties that the mere shortage of labour, materials or utilities shall not constitute force majeure unless caused by circumstances which are themselves force majeure. Any claim that any default hereunder shall have been caused by force majeure shall be notified in writing immediately by the party making the claim to the other.

22. GIFTS

22.1 The Supplier, its servants or agents shall not offer or give or agree to give to any person connected with the University any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do anything in relation to the obtaining of the Order or the execution of the Supplier's obligations under the Order or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to the Order.

22.2 Any breach of Clause 22.1 by the Supplier, his servants or agents or the commission of any offence by the Supplier, his servants or agents under the Prevention of Corruption Acts 1889 to 1916 in relation to the Order shall entitle the University to determine the Order and recover from the Supplier the amount of any loss resulting from such cancellation.