

## DUBLIN CITY UNIVERSITY

### STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND/OR SERVICES

#### 1. INTERPRETATION

1.1 In this Agreement, the following expressions shall have the following meanings:-

**“Agreement”** means the agreement comprising a Purchase Order issued by DCU and the standard terms and conditions set out herein (which are referred to in the Purchase Order);

**“Confidential Information”** means all information in whatever form (including but without limitation written, oral, visual and electronic forms) relating to DCU, its subsidiary and associate companies, their business or affairs, including but without limitation, any information relating to the Goods or Services and any other information which might reasonably be regarded as confidential in nature to DCU. There shall be excluded from the definition of Confidential Information (a) any information which at the time it is disclosed to the Supplier is already in the public domain otherwise than by breach of this Agreement and (b) any information which the Supplier is legally compelled to disclose or which it is ordered to disclose by the Courts or any other competent authority;

**“DCU”** means Dublin City University, having its principal office at Glasnevin, Dublin 9, Ireland;

**“Goods”** means goods (of the kind set out and/or more particularly described in the Purchase Order) to be delivered by the Supplier to DCU;

**“Parties”** means DCU and the Supplier and **‘Party’** shall be construed accordingly;

**“Personnel”** means any employees, agents or servants of the Supplier (including any permitted sub-contractors) who may be involved in the performance of the Services or the provision of the Goods on behalf of the Supplier;

**“Purchase Order”** means a document identified as such, produced by DCU and issued to the Supplier in connection with the supply of Goods and/or Services;

**“Services”** means the services (of the kind set out and/or more particularly described in the Purchase Order) to be performed by the Supplier for DCU; and

**“Supplier”** means the person, firm or company to whom the Purchase Order is addressed; and

**“Term”** means the term of the Agreement, as specified in the Purchase Order (or if not specified, the period of time it takes to provide the Goods and/or Services to DCU in accordance with this Agreement).

1.2 The masculine gender shall include the feminine and neuter and vice versa and the singular number shall include the plural and vice versa. Words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular Article or section thereof.

1.3 The headings in this Agreement are for convenience only and shall not affect the interpretation or construction hereof.

1.4 Unless the context otherwise requires, a reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this Agreement. The provisions of the Schedule shall form part of this Agreement as if they were expressed in its main body.

1.5 References to any statute or other similar legislative instrument shall be construed as a reference to the statute or instrument as amended, modified, consolidated or extended.

#### 2. PROVISION OF GOODS AND/OR SERVICES

2.1 The Supplier shall, on a non-exclusive basis, perform Services and/or deliver Goods to DCU in accordance with the terms and conditions set out herein following the execution by DCU of a Purchase Order and its issue to the Supplier. No Services or Goods are to be performed or delivered unless a Purchase Order is issued to the Supplier..

2.2 It is hereby expressly acknowledged and agreed by the Parties that the Personnel of the Supplier are not employees of DCU.

2.3 The Supplier shall (and shall ensure that its Personnel shall) during the Term:-

- (a) provide the Goods and/or Services to DCU at such places and at such times as DCU or its duly authorised agents shall specify in the Purchase Order or otherwise;
- (b) mark all Goods (and relevant delivery documentation) in accordance with DCU’s instructions and any applicable laws or regulations or instructions of the carrier or manufacturer and pack and secure all Goods properly so that they reach their destination in an undamaged condition;
- (c) ensure that on delivery, Goods are received and signed in by an authorised representative of DCU;
- (d) co-operate with and comply with all reasonable directions and instructions of DCU, its servants and agents in connection with the provision of the Goods and/or Services;

- (e) comply with all applicable laws concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services;
  - (f) comply with all policies, rules, regulations and/or codes of conduct operated by or affecting DCU from time to time and advised to the Supplier;
  - (g) obtain and comply with all licences, permits and authorisations necessary for the performance of the Services and/or provision, transport, labelling and handling of the Goods (at its own cost); and
  - (h) take all take all necessary precautions to prevent injury or damage to any person or property on DCU's premises and comply strictly with all relevant health and safety laws, regulations and codes of practice.
- 2.4 The Supplier warrants and represents that:
- (a) all Goods will be of merchantable quality (within the meaning of the Sale of Goods and Supply of Services Act 1980) and fit for any purpose held out by DCU or made known to the Supplier before the Purchase Order was issued;
  - (b) all Goods shall be free of defects in design, materials and workmanship;
  - (c) all Goods shall correspond with any relevant samples provided;
  - (d) all Goods supplied to DCU hereunder are supplied free of encumbrance and shall not infringe any patent, trademark or other intellectual property of any third party and the Supplier has good title to the Goods;
  - (e) all Goods and Services supplied comply with all relevant legal requirements and European or Irish standards and any specifications or requirements of DCU agreed with the Supplier in advance; and
  - (f) it shall provide the Services with all due care, skill and diligence and that all Personnel involved in performing the Services are suitably experienced, qualified and competent.
- 2.5 The Supplier shall assign or procure the benefit of any manufacturers' warranties or guarantees in respect of the Goods to or for DCU and shall provide all reasonable assistance to DCU in enforcing same.
- 2.6 Time shall be of the essence in relation to the delivery of the Goods and the performance of the Services.
- 2.7 Risk of damage to or loss of the Goods shall pass to DCU upon delivery in accordance with Clause 2.3(c). Title and property in Goods shall transfer to DCU at the time of payment.
- 2.8 In the event that Goods are delivered to DCU which fail to comply with the provisions of this Agreement and any particular requirements, specifications or quantities specified in the Purchase Order, or otherwise agreed by the Parties, DCU may, at its sole option, be entitled, without incurring any liability and without prejudice to any other rights or remedies it may have, to either:
- (a) cancel this Agreement (including the relevant Purchase Order) (or any part of it) in which case no further payments shall be due thereunder and the Supplier shall promptly and at its sole expense collect the Goods and refund DCU in full any sums paid in respect of such Goods; or
  - (b) require the Supplier to replace the Goods with those which comply with this Agreement and all particular requirements, specifications and quantities specified in the Purchase Order or otherwise agreed by the Parties, which the Supplier shall do promptly and at no additional cost or expense to DCU; or
  - (c) require the Supplier to repair the Goods such that they then comply with this Agreement and all particular requirements and specifications specified in the Purchase Order or otherwise agreed by the Parties, which the Supplier shall do promptly and at no additional cost or expense to DCU.
- 2.9 In the event that Services provided to DCU fail to comply with the provisions of this Agreement or any particular requirements or specifications specified in the Purchase Order or otherwise agreed by the Parties, DCU may, at its sole option, be entitled, without incurring any liability and without prejudice to any other rights or remedies it may have, to either:
- (a) cancel this Agreement (including relevant Purchase Order) (or any part of it) in which case no further payments shall be due thereunder and the Supplier shall promptly and at its sole expense cease providing the Services and refund DCU in full any sums paid in respect of same; or
  - (b) require the Supplier to re-perform the Services in compliance with this Agreement and all particular requirements or specifications specified in the Purchase Order or otherwise agreed by the Parties, which the Supplier shall do promptly and at no additional cost or expense to DCU.
- 2.10 DCU shall be under no obligation to accept delivery of Goods or performance of Services in advance of any time and date specified for such delivery or performance in the Purchase Order or at a place other than any specified in the Purchase Order. DCU personnel may sign delivery dockets to indicate receipt of Goods from the Supplier, however this shall not indicate that DCU accepts that the Goods (or the delivery thereof) comply with this Agreement.
- 2.11 The Supplier shall permit authorised representatives of DCU (including external auditors) to visit its premises or any other location from which Goods and Services may be provided at reasonable times in order to inspect relevant facilities and records relating to the provision of the Goods and/or Services and ensure that the Supplier is discharging its duties and obligations to DCU's reasonable satisfaction. Nothing herein shall in any way relieve the Supplier from performing its duties and obligations in accordance with this Agreement.
- 2.12 Any containers that are debited to DCU's account are returnable but must be clearly marked by the Supplier as 'Returnable'. The Supplier shall be required to remove all packaging from DCU's premises at its own expense,

however should DCU wish to accept some packaging then it shall be treated as non-returnable and DCU shall not be required to make any payment for it.

- 2.13 If notified promptly in writing of any action brought against DCU based upon a claim that Goods provided by the Supplier infringe any patent, trade mark, copyright or other intellectual property right, the Supplier will defend such action at its expense and pay any costs and damages awarded and any expenses incurred by DCU in connection with the claim (including legal and other expert fees). The Supplier shall have sole control of the defence of any such action and all negotiations for its settlement or compromise. If as a result of such claim DCU is prohibited from using or otherwise unable to use the Goods or if such a claim is likely to be made, the Supplier will either procure for DCU the right to continue using the goods, or replace or modify the infringing parts without detracting from the Goods overall performance so that they become non-infringing. The Supplier shall indemnify DCU against any loss of use during such modification or replacement.
- 2.14 The Supplier shall supply and fit free of charge within any relevant warranty period any spare parts for the Goods. The Supplier shall also ensure that new and compatible electronic or mechanical spare parts are available for a period of at least 3 years from the date of delivery.

### 3. **Personnel**

- 3.1 DCU reserves the right to refuse to admit to, or remove from, any premises occupied by or on behalf of it, any Personnel whose admission or presence would, in the reasonable opinion of DCU, be undesirable. The reasonable exclusion of any such individual from the premises of DCU shall not relieve the Supplier from the performance of its obligations under this Agreement.
- 3.2 The Supplier shall ensure that Personnel are fully trained, qualified and competent to provide the Goods and/or Services and shall use its best endeavours to ensure that the Personnel are made aware of and comply with all relevant terms and conditions of this Agreement and all policies, rules, regulations and/or codes of conduct operated by or affecting DCU from time to time. The Supplier shall be liable, for all damage caused to persons or property, or any other losses caused by the default of its Personnel.
- 3.3 The Supplier shall be solely responsible for: (i) paying all salaries, wages, benefits and other compensation that the Personnel may be entitled to receive in connection with the provision of the Goods and/or performance of the Services, (ii) paying and reimbursing all Personnel for all related travel, housing and other expenses which such Personnel may be entitled to receive in connection with providing the Goods and/or performing the Services, and (iii) withholding and paying applicable Irish and foreign payroll taxes and contributions, including, but not limited to, Irish state and local income taxes, unemployment tax, worker's compensation insurance and disability tax, social insurance, pension contributions, or any other similar obligation.

### 4. **Prices and Expenses**

- 4.1 In consideration for the Supplier's provision of the Goods and/or Services in accordance with the provisions of this Agreement, DCU shall pay the Supplier such prices as are set out in the relevant Purchase Order (which shall be deemed to include all applicable taxes (and shall show prices inclusive and exclusive of VAT), duties and levies and all packing, carriage, freight, shipping, insurance and delivery costs) and in accordance with any payment terms set out in the Purchase Order. Following receipt of the Purchase Order, the Supplier shall send an invoice to The Finance Office, DCU, Glasnevin, Dublin 9, Ireland (indicating the relevant Purchase Order number). Payment shall be made within 30 days of receipt of a correct, complete and appropriately vouched invoice at DCU, provided there no dispute in relation to the provision of the relevant Goods and/or Services. In the event of any such dispute, payment may be withheld in respect of any disputed amount until the dispute is resolved.
- 4.2 The Supplier shall not be reimbursed any costs or expenses incurred by it or its Personnel in the course of providing the Goods and/or Services unless these are agreed in advance and in writing by DCU or expressly provided for in the Purchase Order. Any permitted expenses which are claimed must be properly vouched and supporting documentation shall be provided as a condition of payment.
- 4.3 DCU shall pay the Supplier any applicable Value Added Tax (VAT) at the rate and in the manner prescribed by law from time to time, provided VAT is shown separately on the relevant invoice. The Supplier shall, upon request, provide such information, as may be reasonably required by DCU regarding the amount of Value Added Tax charged on invoices submitted.
- 4.4 Professional Services Withholding Tax, if applicable, shall be deducted at the standard rate from any payments made by DCU for Services pursuant to the Purchase Order.
- 4.5 The Supplier shall provide DCU with a current tax clearance certificate (or equivalent document) promptly upon request.
- 4.6 The Supplier shall notify DCU of and pass on to DCU any cost savings to the Supplier resulting from the reduction of raw material costs or process charges.

### 5. **Confidentiality**

- 5.1 The Supplier hereby agrees and undertakes that at any time during the Term or after the termination or expiry of this Agreement:-
- (a) it shall not disclose or allow to be disclosed any Confidential Information to any third party whatsoever without the express prior written consent of DCU;
  - (b) it shall not use or attempt to use any Confidential Information for any purpose other than that for which it was generated or disclosed or in any manner which may or may be likely to injure or cause loss (either directly or

indirectly) to DCU or to assist any third party to gain any commercial advantage over or knowledge in relation to DCU;

- (c) it shall use best endeavours to ensure that Confidential Information is protected against theft, loss or unauthorised access by third parties and shall only be disclosed to Personnel who need to know such information in order that the Goods and/or Services may be provided; and
  - (d) it shall ensure that its Personnel are fully aware of and comply with these confidentiality provisions.
- 5.2 (a) The Service Provider shall observe its obligations set out in the Data Protection Acts, 1988 to 2003, as may be amended, modified or consolidated, together with any further legislation, international convention or EU charter adopted in respect of data protection. The Supplier acknowledges the serious adverse effects which unauthorised disclosure of personal data relating to customers and data subjects would have upon the operations of DCU and shall endeavour, in accordance with good industry practice, to avoid any such disclosure. In particular, but without limitation of the foregoing, the use of CCTV equipment in public and/or sensitive areas shall comply with the Data Protection Acts 1988 to 2003.
- (b) The Service Provider shall obtain the prior written agreement of DCU, such agreement not to be unreasonably withheld or delayed, to store or process personal data, as defined by the Data Protection Acts 1988 to 2003, for the purpose of performing the Supplier's obligations under the Agreement at sites outside Ireland (excluding Northern Ireland).
- (c) Failure by either Party to comply with Clause 5.2 (a) may constitute a material breach of obligation. In the event that such failure should be considered a material breach of obligation, then, dependent upon the facts of each incident, such failure shall be deemed a material Default incapable of remedy, entitling the injured party to terminate the Agreement in accordance with Clause 5.2.(a).

## 6. Termination

- 6.1 Subject to any earlier termination in accordance with the provisions herein, this Agreement shall be for the Term.
- 6.2 Notwithstanding the foregoing, DCU may at any time during the Term, on giving the Supplier 30 days notice, terminate the Agreement for any reason whatsoever. In this event, it is expressly agreed that the Supplier shall be entitled to payment in respect of Goods and/or Services ordered prior to the date of termination only (provided they are subsequently delivered in accordance with the agreed terms) and the Supplier shall not have any other claim or demand for payment against DCU.
- 6.3 This Agreement may be terminated by DCU forthwith by notice in writing to the Supplier if the Supplier (or its Personnel) shall at any time:-
- (a) commit any serious or persistent breach or non-observance of the terms or provisions of this Agreement which either cannot be remedied or, if capable of remedy, have not been remedied by the Supplier within such period as DCU may specify; or
  - (b) be guilty of any fraud or serious misconduct or neglect in the discharge of his duties hereunder or be convicted of any criminal offence or commit any act of dishonesty; or
  - (c) have a receiver, manager or examiner appointed over it or over any part of its undertaking or assets, or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or have a petition presented for its winding up or for the appointment of an examiner to it or shall enter into any composition or arrangement with its creditors or cease or threaten to cease to carry on its business.
- 6.4 The expiry or earlier termination of this Agreement shall not prejudice or affect any right of action, remedy or liability which shall have accrued or shall thereafter accrue to the Parties; neither shall it affect the coming into force or the continuance in force of any provision hereof or the Purchase Order which is expressly or by implication intended to come into or continue in force on or after such expiry or termination, including for the avoidance of doubt Clauses 2.4, 2.5, 2.7-9, 2.13, 5, 6, 7.1-3, 7.6, 7.9, 7.14-18 and 7.21.

## 7. MISCELLANEOUS PROVISIONS

- 7.1 The Supplier is engaged for its ability to provide the Goods and/or Services with expertise and DCU shall rely on such expertise. In the event that DCU suffers any loss or damage arising from any act or omission or breach of this Agreement or any statutory duty by the Supplier or its Personnel, the Supplier shall be liable for such loss or damage in full. The Supplier shall indemnify DCU against any claims, proceedings or actions and any losses, costs, expenses or damages incurred by it arising out of any act or omission or breach of this Agreement or of any warranty or of any statutory duty by the Supplier or its Personnel (including as a result of such losses, costs, expenses or damages being incurred by a third party).
- 7.2 The Supplier shall take out and maintain in force during the Term adequate policies of insurance covering all usual risks which may arise pursuant to this Agreement (which shall be sufficient to cover the replacement value of any goods or property which may be damaged) and upon request shall produce to DCU copies of relevant policies and evidence that premiums have been paid.
- 7.3 DCU's aggregate liability to the Supplier under this Agreement shall not exceed the balance of any sums which remain unpaid under the Purchase Order. DCU shall not in any event be liable to the Supplier for any indirect, consequential or special losses or damages or for any loss of revenue or profits. Liability is not limited or excluded where this is not permitted by law.
- 7.4 Additional terms or conditions relevant to the performance of the Services and/or provision of the Goods (if any) are set out in the Purchase Order.

- 7.5 The Parties agree at all times in performing their obligations under this Agreement to comply with the Ethics in Public Office Acts, 1995 and 2001. The Supplier shall not give, provide or offer to any employee, servant or agent of DCU a loan, fee, reward, gift, advantage, benefit or other payment unless it is provided for in this Agreement.
- 7.6 In accordance with Section 6(9) of the Freedom of Information Acts 1997 and 2003 (**'the Acts'**), any record in the possession of the Supplier shall insofar as it is related to the Goods and/or Services provided hereunder, be deemed for the purpose of the Acts to be held by DCU and shall be made available by the Supplier to DCU upon request for retention by DCU for such period as DCU considers reasonable in the circumstances. The Supplier acknowledges and accepts that it may be necessary for DCU to release such records to third parties to comply with requests for records made pursuant to the Acts.
- 7.7 No delay or failure in performance by either Party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure. Unless otherwise instructed by DCU, the Supplier shall recommence performance as soon as possible after the Force Majeure has ceased. 'Force Majeure' shall mean an occurrence beyond the control and without the fault or negligence of the Party affected and which the said Party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots; floods, unusually severe weather conditions which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or other similar occurrences other than strikes or concerted acts of the Supplier's workforce. If any such delay or failure in performance persists for 28 days or more, DCU shall have the right to terminate this Agreement by giving notice in writing to the Supplier.
- 7.8 If any sum of money shall be due from the Supplier to DCU, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with DCU.
- 7.9 The Supplier shall not sub-contract any aspect of the provision of Goods or Services to any third party without the prior written consent of DCU. In the event that DCU does consent to a sub-contractor, the Supplier shall remain fully responsible for the provision of the Services and the acts and omissions of that sub-contractor as if they were its own. The Supplier shall also maintain during the Term and for 6 years thereafter records and documentation relating to the sub-contractor and the services provided by it and shall make same available to DCU upon request.
- 7.10 This Agreement shall be assignable in whole or in part by DCU but shall not be assignable by the Supplier.
- 7.11 The Supplier shall act at all times as an independent Supplier. Nothing contained in this Agreement and no action by the Parties pursuant to this Agreement, shall constitute or be deemed to constitute or imply a joint venture, partnership, association or principal-agent relationship between the parties; and neither Party by virtue of this Agreement shall have the right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party.
- 7.12 This Agreement shall enure to the benefit of and be binding upon the respective Parties hereto and their respective heirs, administrators, successors and permitted assigns.
- 7.13 This Agreement may only be amended by written agreement of the authorised representatives of the Parties.
- 7.14 The rights of DCU shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier, and no waiver by DCU in respect of any breach will operate as a waiver in respect of any subsequent breach. No failure or delay by DCU in exercising any rights or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy by DCU prejudice its further exercise or the exercise of any other right or remedy by DCU.
- 7.15 The provisions of this Agreement, and the rights and remedies of the Parties under this Agreement, are cumulative and without prejudice and in addition to any rights or remedies which a party may have at law or in equity. No exercise by a party of any one right or remedy under this Agreement or at law or in equity shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise the exercise by it by any other such right or remedy.
- 7.16 Each of the provisions in this Agreement are distinct and severable, and if any provision, or part of a provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority, it shall to that extent be deemed not to be part of this Agreement and the enforceability, legality and validity of the remainder of this Agreement will not be affected.
- 7.17 In the event of any dispute between the Parties in relation to this Agreement, the first level representatives of the Parties shall endeavour to resolve it within 30 days of the matter being referred to them. If they are unable to resolve the dispute within this period the matter shall be referred to the second level representatives of the Parties, who shall endeavour to resolve it within a further 30 days from the date it was referred to them. In the event that they are unable to resolve the dispute within this period, the Parties may seek to resolve the dispute in the Irish Courts unless they agree to use some other dispute resolution procedure.
- 7.18 This Agreement (including the Purchase Order and any documents referred to specifically therein) supersedes all prior representations, arrangements, understanding and agreements between the Parties and sets forth the entire complete and exclusive agreement and understanding between the Parties relating to the subject matter hereof. It is expressly agreed, without prejudice to the foregoing, that any standard terms or conditions of sale or supply of the Supplier (including those which appear on any invoice furnished by the Supplier in the course of providing the Goods and/or Services) shall not be applicable. If there is any inconsistency or conflict between these terms and conditions and any terms or conditions stated on the face of a Purchase Order, the latter shall take precedence.
- 7.19 Any notice or other communication required to be given under this Agreement shall be in writing addressed to the relevant party at the address set out in this Agreement for such party (and in the case of notices sent to DCU, these shall be addressed to the **'Procurement Officer (Finance Office)'** specifically and may be sent by prepaid registered post or facsimile transmission. Any such notice or other communication will be deemed to have been duly served or given:

- (a) in the case of posting thirty six (36) hours after despatch; or
- (b) in the case of facsimile, on senders receipt of the transmission receipt.

If notice is not given or served during usual business hours on a day other than a Saturday or Sunday or a statutory or public holiday in Ireland it will be deemed to have been given or served on the next day which is not a Saturday or Sunday or a statutory or public holiday.

7.20 This Agreement shall in all respects be construed in accordance with Irish law, and the Parties hereto submit to the exclusive jurisdiction of the Irish Courts.