

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

1. Definitions

1.1. In these terms and conditions (the "**Conditions**") between the Supplier and EDINBURGH NAPIER UNIVERSITY (the "**Purchaser**"), the words and expressions defined in Part 1 of the Schedule appended to these Conditions shall have the meanings set out there unless the context otherwise requires.

1.2. In interpreting these Conditions: (i) headings are for ease of reference only and shall not affect the construction of these Conditions; and (ii) where reference is made to a statutory provision this includes any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations or other delegated or subordinate legislation made from time to time under it.

2. Basis of Purchase

2.1. [The Purchaser has asked the Supplier for a quotation in respect of the Goods and Services.] **AND/OR** [The Purchaser has submitted a Purchase Order to the Supplier.] The details of the Goods and Services are set out in the Specification. The Purchaser agrees to purchase the Goods and/or Services as set out in the Specification subject to these Conditions. The Supplier will be deemed to have agreed to provide the Goods and/or Services as set out in the Specification subject to these Conditions on the earlier of the Supplier: (i) signing the relevant Purchase Order or quotation (as applicable); (ii) confirming to the Purchaser in writing that it accepts the Contract; or (iii) beginning work on the performance of the Contract.

2.2. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions put forward at any time by the Supplier.

2.3. Requests to vary the Contract must be submitted to the other party in writing. The Contract shall only be varied with the written agreement of both parties.

3. Specifications and Quality

3.1. The Supplier shall comply with all relevant laws and regulatory requirements applicable to the Goods and/or Services (including, without limitation, those relating to bribery, tax evasion, anti-slavery, human trafficking and health and safety), and Good Industry Practice. Any breach of this Condition 3.1 shall constitute a material breach of the Contract, and the Purchaser shall be able to terminate the Contract immediately on written notice. The Supplier shall indemnify the

Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 3.1.

3.2. The Supplier warrants that, on delivery and, unless a longer period is specified in the Specification, for a minimum period of [12 months] from the date of delivery (the "**Warranty Period**"), the Goods shall: (i) conform in all respects with the Specification and these Conditions; (ii) be free from defects in design, material and workmanship; (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and (iv) be fit for any purpose that the Goods in question are commonly used for, any purpose held out by the Supplier, and any purpose made known to the Supplier by the Purchaser (whether expressly or impliedly).

3.3. The Supplier warrants that the Services shall be supplied: (i) to the Purchaser in accordance with the Specification and these Conditions; (ii) using all due care and skill; (iii) using suitable experienced personnel who carry out their duties with due diligence and in accordance with good industry practice; and (iv) using any individuals named in the Specification as key personnel.

3.4. The Goods shall be delivered to, and the Services shall be performed at, the address specified in the Specification during the Purchaser's usual business hours. Goods will be installed as specified in the Specification. Any access to Premises and any labour and equipment that may be provided by the Purchaser shall be provided without acceptance by the Purchaser of any liability whatsoever. The Supplier shall indemnify the Purchaser in respect of any actions, suits, claims, demands losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage, death or injury occurring in the course of delivery or installation to the extent that any such damage, death or injury is attributable to any act or omission of the Supplier.

3.5. The Supplier shall ensure that the delivery of Goods and performance of Services is completed by the relevant date(s) or milestone(s) contained in the Specification or, where no date is specified, such date as the Purchaser may reasonably specify. Time is of the essence in respect of the Supplier's delivery of Goods and performance of Services under the Contract. If the Goods and/or Services are to be supplied in instalments the Contract will be treated as a single contract and not severable. Failure by the Supplier to

deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Purchaser to the remedies set out at Conditions 4.2, 4.3, 10.2 and 10.7.

3.6. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract. 5.1

3.7. The Supplier shall comply with all applicable law, including, without limitation, the relevant provisions in the Bribery Act 2010 and the Equality Act 2010.

3.8. The Supplier shall, at all times during the performance of its obligations under the Contract and for a period of ten (10) years thereafter, maintain written records to demonstrate its compliance with the Contract, and promptly provide copies of such records to the Purchaser on request.

4. **Property, risk and the right of rejection**

4.1. Property and risk in the Goods shall pass to the Purchaser immediately after delivery has been satisfactorily effected, provided that such passing of property and risk shall not prejudice either the Purchaser's right to reject the Goods or any other rights that the Purchaser may have under the Contract. 5.3
Notwithstanding the foregoing, where advance or progress payments are made by the Purchaser, property, but not risk, shall pass to the Purchaser as soon as the first of such advance or progress payment(s) has been made. 5.4

4.2. The Purchaser shall, without limiting its other rights and remedies, be entitled to reject any Goods which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Purchaser has had a reasonable time to inspect them following delivery or, in the case of a latent defect, within a reasonable time after the latent defect has become available. The making of payment (either in whole or in part) shall not prejudice the Purchaser's right of rejection. Upon rejection property and risk in the rejected Goods shall revert to the Supplier. Any Goods rejected by the Purchaser as described in this Condition 4.2 shall be returned to the Supplier at the Supplier's risk and expense. 5.5

4.3. Where Goods are rejected pursuant to Condition 4.2, the Purchaser may either, at its sole discretion and without prejudice to any other rights and remedies that might be available to it, claim a refund in respect of the rejected Goods or afford the Supplier reasonable opportunity to replace rejected Goods with Goods which conform in all respects to the requirements specified in the Contract. 5.5.1

On receipt of notice from the Purchaser that the Purchaser has rejected the Goods and is claiming a refund, the Supplier shall pay to the Purchaser in full any amounts paid by the Purchaser in respect of rejected Goods.

Price and payment

The price of the Goods and/ or Services (the "Price") shall be as stated in the Specification and, unless expressly agreed otherwise, all prices shall be: (i) exclusive of any applicable value added tax ("VAT") (which shall be payable by the Purchaser subject to receipt of a VAT invoice); (ii) inclusive of all charges for packaging, shipping, insurance and delivery; (iii) inclusive of all duties, imposts or levies other than VAT; and (iv) fixed and not subject to any increase (whether due to inflation, increased exchange rates or otherwise) without the Purchaser's written consent.

The Supplier shall raise invoices in accordance with the invoice timetable contained in the Specification. Where no such invoice timetable is contained in the Specification, the Supplier shall invoice for the Price in full on completion of all of its obligations under the Contract.

Provided the Goods and/ or Services have been supplied in compliance with the Contract then, unless otherwise agreed, payment shall be made by the Purchaser 30 days after a valid invoice is received.

The Purchaser may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier.

The Supplier shall ensure that its sub-contracts all contain a clause:

5.5.1 notifying the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and, if the sub-contractor has any difficulty in securing timely payment of an invoice, that matter may be referred to the Purchaser by the sub-contractor;

5.5.2 requiring the Supplier to pay the relevant sub-contractor without deduction and not more than 30 days after the receipt of a valid and payable invoice unless the Supplier is exercising a right of retention or set-off in respect of a breach of the sub-contract by the relevant sub-contractor; and

5.5.3 in the same terms as that set out in this clause 5.5 (including, for the avoidance of doubt, this clause 5.5.3) subject only to modification to refer to the

correct designation of the equivalent party as the Supplier and sub-contractor as the case may be

- 5.6 The Supplier is requested to address complaints regarding the late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Director of Finance & Infrastructure.
- 5.7 The Supplier shall, at least once quarterly and more frequently on request, provide the Purchaser with all such information as the Purchaser may reasonably require to ensure the Supplier and any sub-contractors have complied with the requirements of clause 5.5.

6. Intellectual Property Rights

- 6.1. The Supplier shall indemnify and keep indemnified the Purchaser in full and on demand against all liabilities, damages, actions, suits, claims, demands, losses, charges, costs and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional cost and expenses) which the Purchaser may suffer or incur as a result of or in connection with any claim made against the Purchaser that its receipt of the Goods and/ or Services infringes or allegedly infringes the Intellectual Property Rights of any third party.
- 6.2. Where the Services include the creation, development or otherwise of Intellectual Property Rights by the Supplier, the Purchaser shall own all such Intellectual Property Rights. The Supplier hereby assigns to the Purchaser absolutely with full title guarantee all its property, right, title and interest in such Intellectual Property Rights, including: (i) all statutory and common law rights (including but not limited to the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief in respect of any infringement); (ii) the absolute entitlement to any registration of the Intellectual Property Rights; and (iii) all goodwill attaching to the Intellectual Property Rights. At the request of the Purchaser, the Supplier shall execute and deliver all such further documents and forms and perform such acts as may be required for the purpose of giving full effect to this Condition.
- 6.3. The Supplier acknowledges that all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier ('**Purchaser Materials**') and all rights in the Purchaser Materials are and shall remain the exclusive property of the Purchaser. The Supplier shall keep the Purchaser

Materials in safe custody at its own risk, maintain them in good condition until returned to the Purchaser and not dispose or use the same other than in accordance with the Purchaser's written instructions or authorisation.

This Condition 6 shall survive termination of the Contract.

Confidential Information & Data Protection

The Supplier shall keep all information provided by the Purchaser, its employees or agents in strict confidence. The Supplier shall only disclose such confidential information to those of its employees and agents who need to know it for the purposes of fulfilling the Contract, and shall ensure that such employees and agents comply with the obligations set out in this Condition as though they were a party to the Contract. If the Supplier is required to disclose the confidential information by law, any governmental or regulatory authority or by a court of competent jurisdiction, the Supplier must first inform the Purchaser of the legal or regulatory requirement and give the Purchaser an opportunity to object or challenge the requirement, unless the law prohibits such notice.

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

Both parties will comply with all applicable requirements of any applicable law or regulation relating to privacy and/or personal data, including, without limitation, the Data Protection Act 2018, Regulation (EU) 2016/679 General Data Protection Regulation (and any retained UK law version of such Regulation) (the "Data Protection Laws"). The parties do not intend that data capable of identifying any living individual shall be shared or otherwise processed in connection with the Contract. If, however, it subsequently becomes necessary for such data to be shared or processed, the parties shall enter into a legally compliant written agreement relating to such sharing or processing, and shall not share or otherwise process any personal data until the written agreement is signed by both parties.

This Condition 7 shall survive termination of the Contract.

Spares, Usage and Storage

Without prejudice to any rights that the Purchaser may have under the Contract or by statute, common law or

otherwise, the Supplier shall, promptly at the request of the Purchaser during the Warranty Period, supply and fit, free of charge, new spare parts required for the purposes of repair of the Goods.

- 8.2. The Supplier shall ensure that adequate instruction is given to the Purchaser to ensure proper use and storage requirements of the Goods. The Purchaser's rights, whether under the Contract or by statute, common law or otherwise, will not be prejudiced simply by the Supplier's specification of a supposed life expectancy of any item.

9. Indemnity

- 9.1 Without prejudice to any rights or remedies of the Purchaser, the Supplier shall indemnify and keep indemnified the Purchaser in full and on demand against all liabilities, damages, actions, suits, claims, demands, losses, charges, costs and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional cost and expenses) which the Purchaser may suffer, or incur, as a result of, or in connection with:

- 9.1.1. any damage to the Purchaser's and third parties' properties, or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from the performance by the Supplier of its obligations, or the negligent or wrongful act or omission of the Supplier or its employees, agents, representatives or suppliers; and

- 9.1.2. any claim made against the Purchaser by a third party arising out of or in connection with the supply of the Goods and/ or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier or its employees, agents, representatives or Suppliers.

- 9.2. The Supplier shall maintain in force, with a reputable insurance company, a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy of policies together with receipts or other evidence of payment of the latest premium due thereunder.

- 9.3. This Condition 9 shall survive termination of the Contract.

10. Cancellation

- 10.1. Without prejudice to Condition 10.2. the Purchaser shall be entitled to cancel the Contract in respect of all or part only of the Goods and/ or Services at any time

prior to commencement of delivery of Goods or performance of Services in which event the Purchaser's sole liability to the Supplier shall be to pay to the Supplier the price for the Goods and/ or Services to the extent already supplied or performed and to reimburse the Supplier for any reasonable sums due by the Supplier to a third party in respect of Goods and/ or Services for which the Purchaser has exercised its right of cancellation which cannot be avoided by the Supplier.

- 10.2. The Purchaser shall be entitled to cancel the Contract or any part thereof, without prejudice to any other remedy the Purchaser may have, by giving written notice to the Supplier if:-

- 10.2.1. the Purchaser has rejected Goods pursuant to Condition 4.2; or

- 10.2.2. there is a material breach by the Supplier of any term of the Specification and/or these Conditions which cannot be remedied or, if remediable, is not remedied within thirty (30) days of that party being requested in writing to do so; or

- 10.2.3. the Supplier takes any step or action in connection with the Supplier being made bankrupt, having a receiver appointed to any of its assets, making any arrangement with its creditors or ceasing to carry on business, or the Purchaser has reasonable grounds to believe that any of the foregoing events is about to occur in relation to the Supplier; or

- 10.2.4. the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or agreement with creditors (other than in relation to a solvent restructuring), being wound up (whether voluntary or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or the Purchaser has reasonable grounds to believe that any of the foregoing events is about to occur in relation to the Supplier; or

- 10.2.5. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 10.2.6. the Supplier's financial position deteriorates to such an extent that in the Purchaser's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

- 10.2.7. the Supplier suffers or permits a change of control (within the meaning of Section 1124 of the Corporation Tax Act 2010).

In the event of cancellation for any of the foregoing reasons the Purchaser shall not be liable for any unfulfilled commitment under the Contract.

- 10.3. Termination of the Contract, however arising, shall not affect any of the Purchaser's rights and remedies that have accrued as at termination.
- 10.4. Conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10.5. On the occurrence of any of the events described in Condition 10.2, or if the Supplier shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Purchaser in writing to do so, or, where the Supplier is an individual, if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.
- 10.6. In addition to the rights of termination already specified under this Condition 10, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 7 days' notice to that effect.
- 10.7. Cancellation in accordance with the terms of these Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of any Conditions that are described as surviving termination.

11. Free-issue materials

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

12. TUPE

The parties acknowledge and agree that the Transfer Regulations are not intended to apply to any person as a consequence of the commencement or termination, in whole or in part, of this Agreement or the provision of the Services.

13. Assignment and sub-contracting

The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

14. No waiver

No failure of delay by the Purchaser in exercising any right or remedy under the Contract or by law shall operate as a waiver of such right or remedy nor shall it prevent or restrict the further exercise of that right or remedy. No single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.

15. Severability

If any provision or part-provision of these Conditions and/or the Specification becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the remaining provisions and parts of these Conditions and/or the Specification.

16. Third Party Rights

Unless it expressly states otherwise, these Conditions do not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of these Conditions.

17. Force Majeure

If a party is prevented, hindered or delayed from performing any of its obligations under the Contract by any circumstance not within that party's reasonable control, the affected party shall notify the other party in writing as soon as reasonably practicable. The affected party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations provided that it uses best efforts to mitigate the effect of such circumstance. If the circumstance prevents, hinders or delays the affected party's performance of its obligations under the Contract for more than thirty (30) days, the other party may terminate the Contract with immediate effect by giving written notice to the affected party.

18. Notices

Notices served by one party in connection with this Contract shall be validly served if sent in English by letter by recorded delivery to the address of the other party (as either detailed in this Contract or, if the relevant party is a company, that company's registered office address) or if sent by email to the email addresses detailed in this Contract or otherwise notified to the other party. Provided a notice is correctly sent in accordance with this clause 18, it shall be deemed to have been effectively given on the day when in the

course of the means of sending it, it would first be received by the addressee in normal business hours.

19. Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with Scots Law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings by the Purchaser in any one or more jurisdiction preclude the taking of proceedings by the Purchaser in any other jurisdiction, whether concurrently or not.

20. Audit

The Supplier shall keep and maintain until [2] years after the Contract has been completed records to the satisfaction of the Purchaser of all costs and expenditure which are reimbursable by the Purchaser in connection with the Contract. The provisions of this Condition 20 shall apply during the continuance of this Contract and after its termination howsoever arising.

21. Recovery of Sums Due

Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Purchaser.

22. Public Sector Terms

The Supplier:

- a) must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser;
- b) must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- c) in performing the Contract, must comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes, including the Modern Slavery Act 2015. The Supplier represents and warrants that it has not been convicted of any offence or the subject of any investigation, inquiry or enforcement proceedings in connection with slavery and human trafficking;

- d) shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract and shall undertake, or refrain from undertaking, such acts as the Purchaser requires to enable the Purchaser to comply with its obligations under the Human Rights Act 1998.

A breach of this Condition 22 shall entitle the Purchaser to terminate the Contract immediately. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 22.

SCHEDULE – PART 1: DEFINITIONS

Commencement Date	means the date detailed in the Specification for the commencement of the delivery of Goods or performance of Services; or, where no such date is specified, the date on which the Supplier agrees to supply the Goods and/or Services to the Purchaser pursuant to Condition 2.1.
Contract	means the contract between the Purchaser and the Supplier for the supply of Goods and/ or Services and which is constituted by the Specification, these Conditions and the Schedule appended to these Conditions.
Good Industry Practice	means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier in the same or similar circumstances.
Goods	means the goods described in the Specification and all results of the Services created by the Supplier.
Information Legislation	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
Intellectual Property Rights	means any copyright and neighboring and related rights, patent, trade mark, service mark or trade name, design rights, database rights, utility models, rights to inventions, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights to use, and protect the confidentiality of, confidential information or any other similar right of whatever nature, whether registered or unregistered, present or future, together with any application and right to apply for and be granted, any renewals or extensions thereof, and rights to claim priority from, such rights and all similar rights or forms of protection which will subsist now or in future anywhere in the world.
Premises	the location where the Goods are to be delivered or where the Services are to be performed (as specified in the Specification or as otherwise agreed in writing between the parties).
Purchase Order	means an order for Goods and/or Services submitted by the Purchaser to the Supplier to be given in writing and which shall specify (as applicable): the type and quantity of Goods ordered; the Services to be provided; the delivery date(s) or the date(s) on which Services are to be provided or completed; and any other requirements of the Purchaser.
Supplier	means the person, firm or company to whom the Contract is issued.
Services	means the services described in the Specification.
Specification	means the Purchaser's requirements for the Contract as set out in the relevant Purchase Order and/or quotation (including any document therein contained).
Transfer Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.